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FEDERAL REGISTER

Vol. 82 Tuesday,
No. 107 June 6, 2017

Pages 25931–26334

OFFICE OF THE FEDERAL REGISTER

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2017–0008]

RIN 3150–AJ89

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® Cask System; Certificate of Compliance No. 1031, Amendment No. 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International (NAC or the applicant), MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 7 to Certificate of Compliance (CoC) No. 1031. Amendment No. 7 provides a new Passive MAGNASTOR® Transfer Cask (PMTC) and associated Technical Specification (TS) changes in Appendices A and B, and updates Section 4.3.1(i) in Appendix A of the TSs to include revised seismic requirements. Clarifying (non-technical) changes were also made to Appendices A and B.

DATES: This direct final rule is effective August 21, 2017, unless significant adverse comments are received by July 6, 2017. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0008. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5252; email: *Keith.McDaniel@nrc.gov.*

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0008 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0008.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0008 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC

does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 7 to CoC No. 1031 and does not include other aspects of the NAC MAGNASTOR® Cask System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on August 21, 2017. However, if the NRC receives significant adverse comments on this direct final rule by July 6, 2017, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC MAGNASTOR® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

IV. Discussion of Changes

By letter dated August 7, 2015, as supplemented on April 15, 2016, August 15, 2016, and September 7, 2016, NAC submitted a request to the NRC to amend CoC No. 1031. As documented in the Preliminary Safety Evaluation Report (PSER) for the NAC MAGNASTOR® Cask System, CoC No. 1031, and described in this direct final rule, the NRC staff performed a detailed safety evaluation of the proposed CoC Amendment No. 7 request. The NRC staff determined that Amendment No. 7 does not change the cask design requirements and it does not change the design or fabrication of the cask. The NRC staff found that the TS changes do not impact the casks ability to continue to safely store spent fuel in accordance with 10 CFR part 72 requirements.

This direct final rule revises the NAC MAGNASTOR® Cask System listing in 10 CFR 72.214 by adding Amendment No. 7 to CoC No. 1031. The amendment consists of the changes described in this section, as set forth in the revised CoC and TSs. The revised TSs are identified in the PSER.

Amendment No. 7 provides a new PMTC and associated TS changes in Appendices A and B. Clarifying (non-technical) changes were also made to Appendices A and B. The PMTC is a special lifting device that is used to hold the Transportable Storage Container (TSC) during onsite loading operations, transfer operations, and unloading operations. It is designed for use in high ambient temperatures and has a large gap between the loaded TSC and the cask inner shell to allow passive convective airflow to provide cooling equivalent to that provided by the concrete cask. The PMTC has two lifting trunnions, two sliding doors supported by rails that are welded to the bottom of the cask to allow TSC transfer, and a retaining ring bolted to the top of the cask to prevent an inadvertent lift of the TSC out of the PMTC.

The NRC staff reviewed the structural design features and design criteria, together with an evaluation of the applicant's analysis, to determine the structural adequacy of the PMTC. The NRC staff evaluated aspects of the dry storage system design and analysis related to structural performance under normal and off-normal operations, accident conditions, and natural phenomena events. Based on its review, as documented in the PSER, the NRC staff has reasonable assurance that the structural design of the PMTC is in compliance with 10 CFR part 72.

The NRC staff also performed a thermal review to ensure that the MAGNASTOR® Cask System components and fuel material temperatures will remain within the allowable values for normal conditions, and off-normal and accident events. The review of Amendment No. 7 focused on the thermal analysis of a new transfer cask design. This evaluation included confirmation that the temperatures of the fuel cladding will be within acceptable limits throughout the transfer and storage periods to protect the cladding against degradation, which could lead to gross rupture. The NRC staff concluded that the thermal design of the MAGNASTOR® Cask System, including the PMTC, is in compliance with 10 CFR part 72.

The NRC staff also reviewed the applicant's shielding analysis and dose

rate calculations, and determined that the approaches and methodologies used in these calculations, and the results, are acceptable for the PMTC design.

The structure, thermal, and shielding findings were reached on the basis of a review that considered the regulation itself, appropriate regulatory guides, applicable codes and standards, accepted engineering practices, and the statements and representations in the application.

Additionally, Amendment No. 7 updates Section 4.3.1(i) in Appendix A of the TSs to include revised seismic requirements for the MAGNASTOR® Cask System. The revised TS Section 4.3.1(i) states that ''The maximum design basis earthquake acceleration of 0.37g in the horizontal direction (without cask sliding) and 0.25g in the vertical direction at the Independent Spent Fuel Storage Installation (ISFSI) pad top surface do not result in cask tip-over.'' The NRC staff determined that the revised TS continues to allow the use of the MAGNASTOR® Cask System at a location where the site earthquake parameters are up to and greater than 0.37g in the horizontal direction and 0.25g in the vertical direction at the ISFSI pad top surface. Furthermore, the revised TS continues to require the user to demonstrate that no tip-over will result from an earthquake. The NRC staff concluded that the revision is acceptable and clarifies the provision under which the MAGNASTOR® Cask System may be reasonably implemented by general licensees given the specific earthquake acceleration parameters.

The amended NAC MAGNASTOR® Cask System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into the NAC MAGNASTOR® Cask System casks that meet the criteria of Amendment No. 7 to CoC No. 1031 under 10 CFR 72.212.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC MAGNASTOR® Cask System design listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the NAC MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 7 to CoC No. 1031. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule amends the CoC for the NAC MAGNASTOR® Cask System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 7 provides a new PMTC and associated TS changes in Appendices A and B, and updates Section 4.3.1(i) in Appendix A of the TSs to include revised seismic requirements. Clarifying (non-technical) changes were also made to Appendices A and B.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 7 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

The NAC MAGNASTOR® Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the NAC MAGNASTOR® Cask System would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, any resulting occupational exposure or offsite dose rates from the implementation of

Amendment No. 7 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The NRC staff documented its safety findings in the PSER.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 7 and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC MAGNASTOR® Cask System in accordance with the changes described in proposed Amendment No. 7 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, an interested licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of Amendment No. 7 to CoC No. 1031 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, ''List of Approved Spent Fuel Storage Casks: NAC International, MAGNASTOR® Cask System, Certificate of Compliance No. 1031, Amendment No. 7,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR part 72 that approved the NAC MAGNASTOR® Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

By letter dated August 7, 2015, as supplemented on April 15, 2016, August 15, 2016, and September 7, 2016, NAC submitted an application to amend the NAC MAGNASTOR® Cask System. This request is described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 7 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NAC MAGNASTOR® Cask System under the changes described in Amendment No. 7 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the PSER and the environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule and therefore, a backfit analysis is not required. This direct final rule revises CoC No. 1031 for the NAC MAGNASTOR® Cask System, as currently listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' Amendment No. 7 provides a new PMTC and associated TS changes in Appendices A and B, and updates Section 4.3.1(i) in Appendix A of the TSs to include revised seismic requirements. Clarifying (non-technical) changes were also made to Appendices A and B.

Amendment No. 7 to CoC No. 1031 for the NAC MAGNASTOR® Cask System was initiated by NAC and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 7 applies only to new casks fabricated and used under Amendment No. 7. These changes do not affect existing users of the NAC MAGNASTOR® Cask System, and Amendment Nos. 1–3, Revisions 1, as well as Revision 1 of the Initial Certificate, and Amendments Nos. 4–6 continue to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 7, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 7 to CoC No. 1031 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the

issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the NRC staff.

XIII. Congressional Review Act

The OMB has not found this to be a major rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No.
Request to Amend U.S. NRC Certificate of Compliance No. 1031 for NAC International MAGNASTOR Cask System, Letter Dated August 7, 2015.	ML15225A468.
NAC International, Submittal of Responses to NRC's Request for Additional Information to Amend the U.S. NRC CoC No. 1031 Related to the MAGNASTOR® Cask System, Amendment No. 7 Request, Letter Dated April 15, 2016.	ML16112A029 (Package).
Responses to NRC Request for Additional Information No. 2 Related to the MAGNASTOR® Cask System, Amendment No. 7 Request, CoC No. 1031, Letter Dated August 15, 2016.	ML16230A543 (Package).
NAC International Supplement to Submission of Responses to NRC Request for Additional Information No. 2 Related to the MAGNASTOR® Cask System, Amendment No. 7 Request, CoC No. 1031, Letter Dated September 7, 2016.	ML16253A005.
NAC International MAGNASTOR Storage System, Proposed CoC, Certificate of Compliance No. 1031, Amendment No. 7.	ML16295A243.
NAC International MAGNASTOR Storage System, Proposed Tech Specs, Appendix A, Amendment No. 7	ML16295A248.
NAC International MAGNASTOR Storage System, Proposed Tech Specs, Appendix B, Amendment No. 7	ML16295A252.
NAC International MAGNASTOR Storage System, Proposed Preliminary Safety Evaluation Report, Amendment No. 7.	ML16295A258.

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2017–0008. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2017–0008); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Initial Certificate, Revision 1, Effective Date: February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 1, Revision 1, Effective Date: February 1, 2016.

Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 2, Revision 1, Effective Date: February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 3, Revision 1, Effective Date: February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

Amendment Number 7 Effective Date: August 21, 2017.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 24th day of May, 2017.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Executive Director for Operations.

[FR Doc. 2017–11680 Filed 6–5–17; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8182; Directorate Identifier 2016–NM–069–AD; Amendment 39–18906; AD 2017–11–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. This AD was prompted by reports of cracks in certain pivot fittings of a CFM56 engine's thrust reverser (T/R). This AD requires repetitive inspections for cracking and corrosion of certain pivot fittings of a CFM56 engine's T/R, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 11, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 11, 2017.

ADDRESSES: For Airbus service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

For Goodrich Aerostructures service information identified in this final rule, contact Goodrich Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910–2098; telephone 619–691–2719; email *jan.lewis@goodrich.com;* Internet *https://techpubs.goodrich.com.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8182.

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–2016–8182; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. The NPRM published in the **Federal Register** on August 3, 2016 (81 FR 51142). The NPRM was prompted by reports of cracks on the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R. The NPRM proposed to require repetitive inspections for cracking and corrosion of the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R, and corrective actions if necessary. We are issuing this AD to detect and correct such cracking and corrosion, which could lead to T/R malfunction and, in a case of rejected takeoff at V_1 on a wet runway, a consequent runway excursion, possibly resulting in damage to the airplane and injury to occupants.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0076, dated April 18, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. The MCAI states:

> Several operators reported finding cracks, during an unscheduled inspection, on the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's thrust reverser (T/R). Investigation results revealed that these cracks were caused by a combination of stress and fatigue effects. Further analysis determined that only aeroplanes fitted with CFM56–5A or CFM56–5B series engines could be affected by this issue.
>
> This condition, if not detected and corrected, could lead to T/R malfunction and, in a case of rejected take off at V1 on a wet runway, a consequent runway excursion, possibly resulting in damage to the aeroplane and injury to occupants.
>
> For the reasons described above, EASA issued AD 2016–0068, requiring repetitive inspections [for cracks and corrosion] of the T/R pivot fittings at the 3 o'clock and 9 o'clock positions and, depending on findings, accomplishment of applicable corrective action(s).
>
> Since that [EASA] AD was issued, it was determined that the list of part numbers (P/N) of affected T/R pivot fitting, as identified in that [EASA] AD, was incomplete.
>
> For the reason stated above, this [EASA] AD retains the requirements of EASA AD 2016–0068, which is superseded, but expands the list of affected fitting P/Ns.

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–2016–8182.

Comments

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

Request To Revise Repetitive Inspection Interval

American Airlines (AA) requested that we revise paragraph (g) of the proposed AD to change the proposed repetitive inspection interval for inspecting the T/R pivot fittings from 60 months to 10 years to match certain airworthiness limitation items (ALIs). AA stated that aligning the inspection interval with existing ALIs allows accomplishment of the inspection during a shop overhaul along with other ALIs. AA stated that this will significantly reduce the burden on operators. AA explained that changing this compliance time will not affect the likelihood of fatigue cracking, since fatigue effects are cycle-based and the same cycle-threshold is maintained.

We do not agree with AA's request. EASA, as the State of Design Authority for Airbus products, has determined

that the compliance time of 60 months represents the maximum interval of time allowable for the affected airplanes to continue to safely operate. This determination is based on the severity of the failure and the likelihood of the failure's occurrence, and takes into account the overall risk to the fleet. The FAA and EASA worked with Airbus to ensure that all appropriate actions are taken at the appropriate times to mitigate risk to the fleet. However, under the provisions of paragraph (l)(1) of this AD, we will consider requests for approval of a revised inspection interval if sufficient data are submitted to substantiate that the inspection interval would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Use Later Revisions of Service Information

AA requested that we allow the use of later revisions of the service information for accomplishment of the actions specified in paragraph (g) of the proposed AD. AA asserted that future revisions of the referenced service information will have additional analysis and insight into the design and failure modes of the structure. Additionally, AA pointed out that the FAA will have an opportunity to object to any revisions the manufacturer proposes.

We do not agree with AA's request. We may not refer to any document in an AD that does not yet exist.

In general terms, we are required by the Office of the Federal Register (OFR) regulations to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for ''incorporation by reference.'' See 1 CFR part 51.

To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (l)(1) of this AD. We have not changed this AD in this regard.

Request To Revise Service Information Date

AA requested that we revise the ''Related Service Information under 1 CFR part 51'' section of the preamble and paragraphs (g) and (j) of the proposed AD to correct the revision date specified for Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015. AA pointed out that in the NPRM the release date is stated as December 18, 2015, instead of December 28, 2015.

We agree to fix the typographical error. We have revised this final rule accordingly.

Request To Clarify Which Service Information Is Required for Certain Actions

AA requested that we revise paragraphs (g) and (h) of the proposed AD to clarify that doing the actions in paragraph (g) of the proposed AD in the shop/off-wing requires only accomplishment of Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016. AA asserted that the actions specified in Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015, which provides open-up instructions for on-wing actions, are not necessary to comply with the proposed requirements.

We do not agree with AA's request to revise paragraphs (g) and (h) of this AD to clarify the required actions. However, we do agree to clarify the use of the phrase ''as applicable'' in paragraph (g) of this AD. The intent of using the phrase ''as applicable'' in paragraph (g) of this AD is not to authorize an operator to accomplish either Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015; or Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016. Operators must accomplish the actions in accordance with the applicable requirements in the Airbus service bulletin and the Goodrich Aerostructures service bulletin.

Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016, contains more detailed procedures for accomplishing certain required actions that are specified in Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015. Therefore, operators must use both service bulletins to accomplish the AD requirements.

We also note that Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015, contains Required for Compliance (RC) actions and specifies only paragraphs 3.C. and 3.D. are RC procedures. The ''open-up instructions'' in paragraph 3.B. of the Airbus service bulletin are not RC procedures. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. We have not changed this AD in this regard.

AA also requested that we revise paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of the proposed AD to permit the use of any of the specified service information by adding the phrase ''as applicable'' following references to the service information. AA asserted that this revision would prevent any confusion regarding off-wing maintenance for which Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015, will not be needed since the T/R is not installed on an airplane. AA stated that this revision would align the wording in paragraph (k) of the proposed AD with the wording in the first sentence of paragraph (g) of the proposed AD.

We do not agree to add ''as applicable'' to paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD. If an operator wants to install a spare part, then they still need to perform Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015; and Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016. For example, if a spare met the 60-month threshold to qualify as serviceable then operators are still required to perform the operational test of the thrust reversers after installation of the fittings. We have not changed this AD in this regard.

Request To Clarify Compliance Time in Paragraph (h)(2) of the Proposed AD

AA requested that we revise paragraph (h)(2) of the proposed AD to clarify that the compliance time of 7,200 flight cycles accumulated applies to the T/R and not to the airplane.

We agree that clarification is necessary. The accumulated flight cycles are on the T/R, not the airplane. We have revised paragraph (h)(2) of this AD accordingly.

Request To Revise or Remove Parts Limitation Compliance Time

AA requested that we revise paragraph (j) of the proposed AD to remove the limitation of fixing the unsafe condition on T/Rs prior to installation, as of the effective date of this AD. Rather, AA requested that we revise the compliance times to those in paragraph (h) of the proposed AD if it is determined that, prior to installation, the T/R was removed as part of an

unrelated on-wing maintenance action. AA stated that paragraph (j) of the proposed AD puts a burden on operators to fix the unsafe condition on the T/R if the discrepant T/R is removed for any maintenance reason. Additionally, AA asserted that the proposed actions require special inspection equipment, inventory, consumable materials, etc., which are not readily available at all stations, in addition to the necessary labor and extensive downtime. Alternatively, AA stated that removal of paragraph (j) of the proposed AD would be acceptable.

We do not agree with AA's request. Paragraph (j) of this AD does not require immediate corrective action for a T/R that is removed for any maintenance action, unless the T/R exceeds the thresholds specified in paragraph (j) of this AD. EASA has determined that the compliance time specified in paragraph (j) of this AD should be based on the severity of the failure, the likelihood of the failure's occurrence, and the overall safety risk to the fleet. The FAA and EASA worked with Airbus to ensure that all appropriate action(s) are taken at appropriate times to mitigate risk to the fleet. This determination took into consideration parts and special tool availability, and planning for accomplishment of any necessary corrective action. Airbus did not provide us any information related to a short supply of parts or tools required for accomplishment of this AD. In addition, it is the operator's responsibility to plan appropriately for actions to be taken to assure parts and equipment are available for AD compliance. Therefore, the FAA's expectation is that, as of the effective date of this AD, operators will not install a known unsafe part as specified in paragraph (j) of this AD. However, if the part is already installed and in-service, then operators may utilize the full compliance time as allowed by this AD. Operators have the option of proposing an alternative compliance time, with supportive data, in accordance with paragraph (l)(1) of this AD. We have not changed this AD in this regard.

Request To Permit Flights With Deactivated T/Rs

AA requested that we revise the proposed AD to allow a minimum equipment list (MEL) provision to deactivate affected T/Rs for the allowable duration of that MEL item before accomplishing the corrective actions specified in the proposed AD. AA explained that this action would provide an equivalent level of safety since, during application of the MEL, the T/Rs are deactivated and there is never a possibility of T/R structural failure due to cracking.

We agree with AA's request. We have added paragraph (i)(3) to this AD to state that it is permissible to dispatch an airplane equipped with a T/R pivot fitting(s) having a part number specified in paragraph (g)(1) or (g)(2) of this AD, provided the limitations in Master Minimum Equipment List Item 78–30–01 (which provides for deactivation of the affected T/R) have been followed.

Request To Provide a Provision for Special Flight Permits

AA requested that the proposed AD be revised to include an allowance for special flight permits to allow the operator to operate the airplane to a location where the requirements of the proposed AD can be accomplished.

We acknowledge the potential need for a one-time ferry flight. Although not specifically stated in the proposed AD, there is no restriction prohibiting or limiting special flight permits, as described in Section 21.197 and Section 21.199 of the Code of Federal Regulations (14 CFR 21.197 and 21.199). Therefore, we have not changed this AD regarding this issue.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015. This service information describes procedures for doing inspections for cracking and corrosion of the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R.

Goodrich Aerostructures has issued Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016. This service information describes procedures for doing inspections for cracking and corrosion of the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R, and repair of corrosion.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle	$136,000 per inspection cycle.

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–11–07 Airbus: Amendment 39–18906; Docket No. FAA–2016–8182; Directorate Identifier 2016–NM–069–AD.

(a) Effective Date

This AD is effective July 11, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(4) of this AD, all manufacturer serial numbers.

(1) Airbus Model A318–111 and –112 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, and –115 airplanes.

(3) Airbus Model A320–211, –212, and –214 airplanes.

(4) Airbus Model A321–111, –112, –211, –212, and –213 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Reason

This AD was prompted by reports of cracks on the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's thrust reverser (T/R). We are issuing this AD to detect and correct such cracking and corrosion, which could lead to T/R malfunction and, in a case of rejected takeoff at V_1 on a wet runway, a consequent runway excursion, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Inspections and Corrective Actions

At the applicable compliance time specified in paragraph (h) of this AD: Do a high frequency eddy current (HFEC) inspection for cracking and corrosion of each T/R pivot fitting specified in paragraphs (g)(1) and (g)(2) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015; and Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016; as applicable; except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection of the T/R pivot fittings thereafter at intervals not to exceed 60 months or 12,000 flight cycles, whichever occurs first.

(1) The 3 o'clock position T/R pivot fittings having part numbers (P/N) that are provided in paragraphs (g)(1)(i) through (g)(1)(iv) of this AD.

(i) P/N 321–200–850–6.

(ii) P/N 321–200–851–6.

(iii) P/N 321–200–852–6.

(iv) P/N 321–200–853–6.

(2) The 9 o'clock position T/R pivot fittings having P/Ns that are provided in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD.

(i) P/N 321–200–800–6.

(ii) P/N 321–200–801–6.

(iii) P/N 321–200–802–6.

(iv) P/N 321–200–803–6.

(h) Compliance Times

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do the initial inspection specified in paragraph (g) of this AD. If maintenance records cannot conclusively determine the T/R flight cycles accumulated since first installation, or the time since new, do the initial inspection required by paragraph (g) of this AD at the compliance time specified in paragraph (h)(2) of this AD.

(1) Before exceeding 10 years or 24,000 total flight cycles accumulated by the T/R, whichever occurs first since first installation on an airplane.

(2) Within 36 months or 7,200 flight cycles accumulated by the T/R, whichever occurs first after the effective date of this AD.

(i) Exceptions to Service Information Specifications

(1) If any crack is found during any inspection required by this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) If any corrosion is found during any inspection required by this AD and Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016, specifies obtaining a damage disposition from Goodrich Aerostructures: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(3) Dispatch of an airplane equipped with a T/R pivot fitting(s) having a part number identified in paragraph (g)(1) or (g)(2) of this AD, as specified in Master Minimum Equipment List (MMEL) 78–30–01 (deactivation of the affected T/Rs), is permitted provided the limitations specified in MMEL 78–30–01 have been followed.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install on any airplane a T/R pivot fitting having a part number specified in paragraph (g)(1) or (g)(2) of this AD, unless it is determined, prior to installation, that the T/R pivot fitting has accumulated less than 10 years and fewer than 24,000 total flight cycles since its first installation on an airplane, or less than 60 months and fewer than 12,000 flight cycles after having passed an inspection, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015; and Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016.

(k) Credit for Previous Actions

(1) 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 Airbus Service Bulletin A320–70–1003, dated May 7, 2014.

(2) This paragraph provides credit for actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (k)(2)(i), (k)(2)(ii), or (k)(2)(iii) of this AD.

(i) Airbus Service Bulletin A320–70–1003, dated May 7, 2014; and Goodrich Aerostructures Service Bulletin RA32078–137, dated April 29, 2014.

(ii) Airbus Service Bulletin A320–70–1003, dated May 7, 2014; and Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 1, dated January 26, 2015.

(iii) Airbus Service Bulletin A320–70–1003, dated May 7, 2014; and Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 2, dated December 2, 2015.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. 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 Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0076, dated April 18, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8182.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3), (n)(4), and (n)(5) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–70–1003, Revision 01, dated December 28, 2015.

(ii) Goodrich Aerostructures Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016.

(3) For Airbus service information identified in this AD, contact Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) For Goodrich Aerostructures service information identified in this AD, contact Goodrich Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910–2098; telephone 619–691–2719; email *jan.lewis@goodrich.com;* Internet *https://techpubs.goodrich.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on May 17, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11129 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7262; Directorate Identifier 2015–NM–079–AD; Amendment 39–18912; AD 2017–11–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 98–13–14, for certain Airbus Model A320–211, –212, and –231 airplanes. AD 98–13–14 required repetitive inspections of certain fastener holes of the aft fuselage, and corrective action if necessary. This new AD continues to require the actions in AD 98–13–14, with revised inspection compliance times. This AD was prompted by identification of cracks in the fastener holes of the former junction of the aft fuselage, which occurred during a fatigue test; and a determination that certain compliance times specified in AD 98–13–14 must be reduced. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 11, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 11, 2017.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of July 30, 1998 (63 FR 34556, June 25, 1998).

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office–EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7262.

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–2016–7262; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to supersede AD 98–13–14, Amendment 39–10602 (63 FR 34556, June 25, 1998) (''AD 98–13–14''). AD 98–13–14 applied to certain Airbus Model A320 series airplanes (Model A320–211, –212, and –231 airplanes). Since we issued AD 98–13–14, an evaluation by the DAH indicates that the former junction of the aft fuselage is subject to fatigue damage.

The NPRM published in the **Federal Register** on June 21, 2016 (81 FR 40210). The NPRM was prompted by the identification of four cracks in the fastener holes in the area of the former junction at frame (FR) 68 between stringers 4 and 5 (left- and right-hand sides), which occurred during a fatigue test, and a determination that certain compliance times specified in AD 98–13–14 must be reduced. The NPRM proposed to continue to require the actions in AD 98–13–14, with revised inspection compliance times. We are issuing this AD to prevent fatigue cracks from occurring or propagating in certain structures, which could adversely affect the structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0084, dated May 13, 2015; corrected May 18, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''); to correct an unsafe condition for certain Airbus Model A320–211, –212, and –231 airplanes. The MCAI states:

> During a fatigue test campaign, four cracks were identified in the fastener holes of the former junction at frame (FR) 68 between stringers 4 and 5.
>
> This condition, if not detected and corrected, could lead to crack propagation, possibly resulting in reduced structural integrity of the fuselage.
>
> To address this unsafe condition, DGAC [Direction générale de l'aviation civile] France issued * * * [an AD, which corresponds to FAA AD 98–13–14] to require repetitive inspections and, depending on findings, the accomplishment of an applicable repair solution.
>
> That [DGAC] AD also provided modification of FR 68 [cold working of fastener and tooling holes] in accordance with Airbus Service Bulletin (SB) A320–53–1090 as optional terminating action.
>
> Following new analyses, the thresholds and inspection intervals have been reviewed and adjusted.
>
> For the reason described above, this [EASA] AD retains the requirements of DGAC France AD 96–298–093(B)R2 [*http://ad.easa.europa.eu/ad/F-1996-298R2*], which is superseded, and requires those actions within the new thresholds and intervals.
>
> This [EASA] AD was republished to correct a typographical error in the Reason.

Repairs include doing applicable related investigative actions (*i.e.,* rotating probe inspection of the hole to make sure the crack is removed and eddy current inspection of the cold expanded holes). 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–2016–7262.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Update Service Information

Airbus requested that Airbus Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016, be referred to in the final rule. This service information replaces a certain nondestructive test manual (NTM) task, removes an eddy current inspection for a certain service bulletin task, and updates the service bulletin airplane effectivity.

We agree with the request and have revised paragraphs (h) and (i) of this AD to refer to Airbus Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016. We have also added paragraph (k)(1)(iii) to this AD to provide credit for Airbus Service Bulletin A320–53–1089, Revision 03, dated March 18, 2015.

Additional Changes to the NPRM

We have revised paragraphs (h)(2) and (h)(3) of this AD to remove references to the revision level and date of the service information that must be used for determining the compliance time, because operators might have used other versions for their most recent inspection. The number of affected U.S. registered airplanes has also been changed from 10 to 4. The total cost to operators has been changed accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

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

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

Related Service Information Under 1 CFR Part 51

We reviewed the following Airbus service information:

- Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016. This service information describes procedures for a special detailed rototest inspection for fatigue cracking of the frame junction holes and the adjacent tooling hole, as applicable, of the right- and left-hand former junctions at FR 68, and repair, including doing applicable related investigative actions.
- Service Bulletin A320–53–1090, Revision 02, dated December 22, 1998. This service information describes procedures for modifying the airplane (cold working of fastener and tooling holes).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Initial and repetitive inspections [retained from AD 98–13–14].	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle	$2,720 per inspection cycle.

We estimate the following costs to do any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	52 work-hours × $85 per hour = $4,420	$3,800	$8,220

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–14, Amendment 39–10602 (63 FR 34556, June 25, 1998), and adding the following new AD:

2017–11–13 Airbus: Amendment 39–18912; Docket No. FAA–2016–7262; Directorate Identifier 2015–NM–079–AD.

(a) Effective Date

This AD is effective July 11, 2017.

(b) Affected ADs

This AD replaces AD 98–13–14, Amendment 39–10602 (63 FR 34556, June 25, 1998) (''AD 98–13–14'').

(c) Applicability

This AD applies to Airbus Model A320–211, –212, and –231 airplanes, certificated in any category, manufacturer serial numbers (S/Ns) 0001 through 0123 inclusive, except those that have embodied Airbus Modifications 21780 and 21781 in production.

(d) Subject

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

(e) Reason

This AD was prompted by identification of four cracks in the fastener holes of the former junction at frame (FR) 68 between stringers 4 and 5, which occurred during a fatigue test, and a determination that certain compliance times specified in AD 98–13–14 must be reduced. We are issuing this AD to prevent fatigue cracks from occurring or propagating in certain structures, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections and Repair, With Additional Methods of Approving Repairs

This paragraph restates the requirements of paragraph (a) of AD 98–13–14, with additional methods of approving repairs. For Model A320 series airplanes, as listed in Airbus Service Bulletins A320–53–1089 and A320–53–1090, both dated November 22, 1995: Prior to the accumulation of 20,000 total flight cycles, or within 500 flight cycles after July 30, 1998 (the effective date of AD 98–13–14), whichever occurs later, perform a rotating probe inspection for fatigue cracking of the fastener holes and/or the adjacent tooling hole, as applicable, of the right- and left-hand former junctions at FR 68, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1089, dated November 22, 1995. Accomplishing an inspection required by paragraph (h) of this AD terminates the actions required by this paragraph.

(1) If no crack is detected, accomplish either paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles; or

(ii) Prior to further flight following the accomplishment of the inspection required by paragraph (g) of this AD, cold work the fastener holes and/or the adjacent tooling hole of the right- and left-hand former junctions at FR 68, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1090, dated November 22, 1995. Accomplishment of this cold working constitutes terminating action for the repetitive inspections required by paragraph (g)(1)(i) of this AD.

(2) If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(h) New Repetitive Inspection Requirement

Within the compliance time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, whichever occurs latest: Accomplish a special detailed rototest inspection for fatigue cracking of the frame junction holes and the adjacent tooling hole, as applicable, of the right- and left-hand former junctions at FR 68, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016. Repeat the inspection thereafter at intervals not to exceed 3,800 flight cycles or 7,600 flight hours, whichever occurs first, until a repair required by paragraph (i) of this AD is done or a modification specified in paragraph (j) of this AD is done. Accomplishing an inspection required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(1) Within 28,700 flight cycles or 57,400 flight hours since airplane first flight, whichever occurs first.

(2) Within 3,800 flight cycles or 7,600 flight hours, whichever occurs first, since the most recent inspection done as specified in the Accomplishment Instructions of Airbus Service Bulletin A320–53–1089.

(3) Within 3,800 flight cycles or 7,600 flight hours after the effective date of this AD, whichever occurs first, without exceeding 20,000 flight cycles since the most recent inspection done as specified in the Accomplishment Instructions of Airbus Service Bulletin A320–53–1089.

(i) New Repair Requirement

If any crack is detected during any inspection required by paragraph (h) of this AD: Before further flight, repair, including doing all applicable related investigative actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016. Do all applicable related investigative actions before further flight. Repair of an airplane in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016, constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD.

(j) New Optional Modification

Modification of an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1090, Revision 02, dated December 22, 1998, constitutes terminating action for the repetitive inspections required by paragraphs (g) and (h) of this AD, provided the modification is accomplished before further flight after accomplishing an inspection required by paragraph (h) of this AD and no cracks were detected.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraphs (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD.

(i) Airbus Service Bulletin A320–53–1089, Revision 01, dated June 4, 1998.

(ii) Airbus Service Bulletin A320–53–1089, Revision 02, dated February 3, 2003.

(iii) Airbus Service Bulletin A320–53–1089, Revision 03, dated March 18, 2015.

(2) This paragraph provides credit for the actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraphs (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Airbus Service Bulletin A320–53–1090, dated November 22, 1995, which was incorporated by reference in AD 98–13–14, Amendment 39–10602 (63 FR 34556, June 25, 1998).

(ii) Airbus Service Bulletin A320–53–1090, Revision 1, dated June 10, 1998, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Branch, send it to the attention of the person identified in paragraph (m)(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 Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0084, dated May 13, 2015; corrected May 18, 2015; 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–2016–7262.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(5) and (n)(6) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 11, 2017.

(i) Airbus Service Bulletin A320–53–1089, Revision 04, dated June 1, 2016.

(ii) Airbus Service Bulletin A320–53–1090, Revision 02, dated December 22, 1998. Pages 1, 2, 7, 8, 9, 10, and 11 of this document are identified as Revision 1, dated June 10, 1998; and pages 3, 4, 5, and 6 of this document are identified as Revision 02, dated December 22, 1998.

(4) The following service information was approved for IBR on July 30, 1998, AD 98–13–14, Amendment 39–10602 (63 FR 34556, June 25, 1998).

(i) Airbus Service Bulletin A320–53–1089, dated November 22, 1995.

(ii) Airbus Service Bulletin A320–53–1090, dated November 22, 1995.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11290 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0124; Directorate Identifier 2016–NM–166–AD; Amendment 39–18911; AD 2017–11–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by several reports of nose wheel steering failures in service. This AD requires a part verification and replacement of certain steering manifolds. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 11, 2017.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of July 11, 2017.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0124.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0124; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, 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: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

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 Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on February 28, 2017 (82 FR 12071). The NPRM was prompted by several reports of nose wheel steering failures in service. The NPRM proposed to require a part verification and replacement of certain steering manifolds. We are issuing this AD to prevent moisture from entering the electrical stage of the electro-hydraulic servo valve (EHSV), which, in combination with a steering selector valve failure, could lead to uncommanded nose wheel steering, and a consequent runway excursion at high speed.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2016–24, dated August 19, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. The MCAI states:

> Several cases of nose wheel steering failures have been reported in service. In one case, the aeroplane experienced uncommanded nose wheel steering, resulting in a runway excursion.
>
> Investigations found the presence of moisture inside the electrical stage of the electro-hydraulic servo valve (EHSV) unit, which resulted in low insulation resistance and corrosion. This condition, in combination with a steering selector valve failure, could result in uncommanded nose wheel steering, which could lead to a runway excursion at high speed.
>
> This [Canadian] AD mandates the replacement of the steering manifold to provide better moisture ingress protection of the EHSV.

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–2017–0124.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015. This service information describes procedures for a one-time verification of the steering manifold part number and replacement of the steering manifold and mod plate. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 161 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Steering manifold part verification	1 work-hour × $85 per hour = $85	$0	$85	$13,685.
Replacement of steering manifold	Up to 4 work-hours × $85 per hour = $340.	Up to $18,522	Up to $18,862	Up to $3,036,7823.

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

Authority for This Rulemaking

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

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

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–11–12 Bombardier, Inc.: Amendment 39–18911; Docket No. FAA–2017–0124; Directorate Identifier 2016–NM–166–AD.

(a) Effective Date

This AD is effective July 11, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, as identified in Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by several reports of nose wheel steering failures in service. We are issuing this AD to prevent moisture from entering the electrical stage of the electro-hydraulic servo valve (EHSV), which in combination with a steering selector valve failure, could lead to uncommanded nose wheel steering, and a consequent runway excursion at high speed.

(f) Compliance

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

(g) Verification and Replacement of Steering Manifold

Within 48 months after the effective date of this AD, do a one-time inspection to determine the part number of the steering manifold, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015.

(1) If the airplane has steering manifold part number (P/N) 40750–103, within 48 months after the effective date of this AD, write ''SB100–32–018'' on the nose landing gear (NLG) mod plate. If the mod plate is missing or full, within 48 months after the effective date of this AD, install a new plate, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015.

(2) If the airplane has steering manifold P/N 40750–101, within 48 months after the effective date of this AD, replace it in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015, and write ''SB100–32–018'' on the NLG mod plate. If the mod plate is missing or full, within 48 months after the effective date of this AD, install a new plate, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015.

(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 Bombardier Service Bulletin 100–32–25, dated September 24, 2014.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a steering manifold, P/N 40750–101, on the NLG assembly of any airplane.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2016–24, dated August 19, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0124.

(2) For more information about this AD, contact Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 100–32–25, Revision 01, dated June 30, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11289 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9226; Directorate Identifier 2016–SW–065–AD; Amendment 39–18910; AD 2017–11–11]

RIN 2120–AA64

Airworthiness Directives; NavWorx, Inc. Automatic Dependent Surveillance Broadcast Universal Access Transceiver Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for NavWorx, Inc. (NavWorx), Automatic Dependent Surveillance Broadcast (ADS–B) Universal Access Transceiver Units (unit). This AD requires removing, disabling, or modifying the ADS–B unit. This AD was prompted by a design change that results in the unit communicating unreliable position information. The actions in this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective July 11, 2017.

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–2016–9226; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, Supplemental Type Certificate (STC) No. SA11172SC, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kyle Cobble, Aviation Safety Engineer, Fort Worth Aircraft Certification Office (ACO), Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177, telephone (817) 222–5172, email *kyle.cobble@faa.gov;* or Michael Heusser, Program Manager, Continued Operational Safety Branch, Fort Worth ACO, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177, telephone (817) 222–5038, email *michael.a.heusser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On October 20, 2016, at 81 FR 72552, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to NavWorx ADS–B Model ADS600–B units, part number (P/N) 200–0012 and P/N 200–0013, and Model ADS600–EXP units, P/N 200–8013. The NPRM proposed to require removing the ADS–B unit before further flight and proposed to prohibit installing the affected ADS–B unit on any aircraft. The NPRM was prompted by a design change that resulted in the ADS–B units broadcasting a Source Integrity Level (SIL) of 3 instead of 0. A broadcast of SIL 0 is required because of the uncertified Global Positioning System (GPS) source included in the unit. The proposed actions were intended to prevent an ADS–B unit from communicating unreliable position information to Air Traffic Control (ATC) and nearby aircraft and a subsequent aircraft collision.

Comments

We gave the public the opportunity to participate in developing this AD. We received approximately 200 comments, mostly from individuals but also from NavWorx and organizations such as the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), and the Aircraft Electronics Association (AEA). The following presents the comments received on the NPRM and the FAA's response to each comment.

A. Support for the NPRM

Five individual commenters supported the NPRM.

B. Comments Regarding the FAA's Justification of the Unsafe Condition

Several commenters, including AOPA, requested that the FAA provide more information about the events that prompted this AD and the technical aspects surrounding the unsafe condition. We agree.

Request: AOPA requested the FAA clarify whether the internal position source in the ADS–B units meets the performance requirements in Appendix B to Advisory Circular (AC) 20–165B. In support of this request, AOPA stated the FAA's contention that NavWorx did not present any data substantiating its SIL change is contrary to NavWorx's public statements that its testing verified the position source met the integrity levels required by the regulations. Similarly, NavWorx commented on the AD and maintained it has provided the FAA with data demonstrating the internal GPS met the requirements to transmit a SIL of 3.

FAA Response: NavWorx has not demonstrated to the FAA that the internal position source meets the performance requirements in Appendix B to AC 20–165B [1] for a SIL of 3. The design specifications for NavWorx's P/N 200–0012 and 200–0013 ADS–B units identify the internal GPS source for those units as an uncertified SiRF IV GPS. The SiRF IV is a commercial grade chipset not manufactured under an FAA Technical Standard Order (TSO). AC 20–165B requires the SIL be set at 0 when the ADS–B is integrated with an uncertified GPS source. When NavWorx submitted its software upgrade changing the SIL value from 0 to 3, no hardware design changes associated with the SIL value change were made to the ADS–B units and no testing data substantiating that SIL change was provided to the FAA. The only justification NavWorx cited for the software change was the FAA's termination of Traffic Information Service—Broadcast (TIS–B) services to aircraft broadcasting ADS–B with a SIL of 0. This data is available for review in Docket No. FAA–2016–9226.

Request: AOPA requested the FAA clarify its meaning of ''uncertified GPS source'' since NavWorx has design approval through STC No. SA11172SC to install the ADS–B unit with the internal GPS on type-certificated aircraft, and since a compliant position source does not need to meet a specific TSO to meet the requirements set forth in Appendix B of AC 20–165B.

Some commenters requested the FAA explain why it approved NavWorx's ADS–B units at all if the internal, uncertified GPS source is objectionable. Many commenters stated the NavWorx ADS–B units meet the performance and accuracy/integrity standards of TSO C–154c; others noted that NavWorx has stated its testing showed the units meet the requirements to broadcast a SIL of

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/.*

3. Several commenters disagreed with the AD because the GPS source is not required to be certified separately from the ADS–B unit.

FAA Response: The commenters, including NavWorx, are correct that the position source only needs to meet certain performance requirements and does not need to be certified under a TSO. However, despite NavWorx's statements and comments to the contrary, NavWorx has presented no data to the FAA—test plans and test results—that demonstrate the affected units with the internal SiRF IV GPS meet the performance standards to transmit a SIL of 3. Similarly, NavWorx has never demonstrated to the FAA that the affected units meet the 14 CFR § 91.227 requirements to broadcast a SIL of 3 when using the internal SiRF IV GPS.

NavWorx's TSO–C154c authorization and STC were approved based on the P/N 200–0012 and 200–0013 units broadcasting a SIL of 0 when using the internal uncertified GPS position source. NavWorx documented this as a limitation in the Aircraft Flight Manual Supplement (AFMS) for NavWorx's STC for ADS600–B installations. Section 2.6 of the AFMS, titled ''Uncertified GPS Receiver (P/N 200–0012 and 200–0013),'' states:

> The ADS600–B has an internal uncertified GPS WAAS receiver which does not meet the *14 CFR 91 FAA–2007–29305* rule for certified GPS position source. If the ADS600–B is configured to use the internal uncertified GPS as the position source the ADS–B messages transmitted by the unit reports: A Source Integrity Limit (SIL) of 0 indicating that the GPS position source does not meet the *14 CFR 91 FAA–2007–29305* rule.

While 14 CFR § 91.227 requires a SIL of 3, TSO–C154c (the TSO under which the affected units are produced) does not. Thus, when the affected units broadcast a SIL of 0, they are TSO-compliant. Until the performance requirements of 14 CFR § 91.227 become effective on January 1, 2020, the FAA does not find the internal uncertified GPS source objectionable, as long as the ADS–B unit is correctly broadcasting a SIL of 0. It is NavWorx's change of the SIL setting in these units to 3, without any qualification of the internal uncertified GPS position source to support broadcast of SIL 3, that the FAA finds unacceptable. In this condition, the units are transmitting to ATC and to nearby aircraft that they have 14 CFR § 91.227-compliant position source integrity, when their position source integrity is actually not compliant with that rule, or is unknown. We discuss the safety effects of this condition in greater detail below.

Request: AOPA requested the FAA further explain its finding that the affected units create an unsafe condition. Many commenters questioned the FAA's determination that the units present an unsafe condition, and asked whether any units have actually caused a collision or safety incident. Many other commenters stated they have been operating with the NavWorx unit and find it accurate and reliable. Several commenters stated the NavWorx units increase safety and noted that the National Transportation Safety Board has recommended ADS–B units to the flying public.

FAA Response: The FAA's safety concern is primarily that of integrity, and not necessarily accuracy, with respect to the NavWorx ADS–B unit's performance requirements. Accuracy refers to the probability of the unit's true position in relation to its reported position.[2] Integrity refers to the trust that can be placed in the correctness of the information provided by the unit and is specified by a SIL value. The SIL value is set based on design data from the GPS position source manufacturer and reflects the probability that the position source will provide incorrect data without providing an alert. This depends on whether the GPS has fault detection and exclusion, where the equipment will detect a faulty satellite and exclude it from the navigational calculations. If the GPS does not have fault detection and exclusion, the probability that the position source will provide incorrect data increases. Commercial position sources, such as the SiRF IV GPS used in the NavWorx P/N 200–0012, 200–0013, and 200–8013 units, do not have fault detection and exclusion capabilities. This is significant in the event a GPS satellite signal fails or a GPS ''signal-in-space error'' occurs.

The unsafe condition relates to the potential for the NavWorx unit to incorrectly report its own position to other aircraft and to ATC, by 0.2 nautical miles (NM) or more, without providing an alert.[3] It may also result in ATC providing incorrect and inappropriate separation instructions or traffic advisories to other aircraft for avoidance of the ADS600–B-equipped aircraft, based on the erroneous position being reported by the ADS600–B. In this situation, the pilot of the ADS600–B-equipped aircraft would be unaware that his or her aircraft's ADS–B Out unit is broadcasting an erroneous position (possibly in excess of 0.2 NM), since the ADS600–B would not be providing an alert for this condition. Depending on operating conditions, these effects may occur in instrument meteorological conditions where see-and-avoid is not possible. In view of these factors, this condition poses an unacceptable hazard to other users of the National Airspace System (NAS).

Although there have been no reported cases of a collision or safety incident resulting from an incorrect transmission by a NavWorx ADS–B unit to date, the potential for the unsafe condition exists as long as the units mislead ATC and nearby aircraft by broadcasting a SIL of 3 that they have not been shown to meet. This AD action addresses that potential unsafe condition.

The fact that commenters have made flight tests with satisfactory ADS–B performance monitor reports from the FAA, or that commenters' individual units have been operating successfully, does not negate the existence of an unsafe condition. Flight tests with the ADS–B performance monitor are designed primarily to show that the ADS–B equipment in an individual aircraft performs correctly as installed. These tests are of relatively short duration and occur in fault-free conditions. They are not engineering tests designed to evaluate the unit's ability to handle GPS signal-in-space errors and cannot be used to draw inferences about the unit's position source integrity.

Although the FAA recognizes the benefits of ADS–B equipage and understands that the NavWorx units may work a large percentage of the time for an individual user, the FAA must consider the effect on the entire NAS. Since failure is based on a statistical probability, the odds that a unit will have a failure increase as more units are introduced into the NAS and operate for a longer period of time. The probability of a failure also increases when there is a GPS satellite malfunction, which could affect many aircraft since the information is used by ATC and ADS–B In equipped aircraft for separation. Therefore, despite any benefit to individual owners when the unit works without failure, the FAA has determined that an unsafe condition with the NavWorx units exists and requires corrective action because of the hazard they pose to other users of the NAS.

[2] Accuracy of an aircraft's reported position is specified as Navigation Accuracy Category for Position, or NAC_P. A unit that complies with 14 CFR 91.227 has a NAC_P corresponding to an accuracy of better than 0.05 nautical miles. The NavWorx units' compliance with the 14 CFR 91.227 NACP (accuracy) performance requirements is not the concern that prompted this AD.

[3] 0.2 NM is the minimum integrity containment radius around the aircraft's reported position required by 14 CFR § 91.227 (c)(1)(iii).

Request: AOPA requested the FAA produce for public inspection the Small Airplane Risk Analysis (SARA) documentation.

FAA Response: As part of our risk assessment, we initially performed a SARA. However, the SARA assumes failure on one airplane. The issue with the NavWorx ADS–B units poses risk to the NAS. Specifically, a malfunction at the satellite level could result in transmission of hazardously misleading position information from the ADS600–B-equipped aircraft to ATC and to other aircraft. It could also cause such malfunctions in all aircraft with the affected ADS–B units installed that are using the signal from the malfunctioning satellite to determine their position. Thus, we determined the SARA results provided questionable value, and that it was more appropriate to use the safety risk methodology from the ADS–B program, as documented in *Safety Risk Management Document (SRMD) Critical Services: Standard Terminal Automation Replacement System (STARS) with Automatic Dependent Surveillance Broadcast (ADS–B) Only Addendum,* SBS–036C, Revision 1, dated August 26, 2014 (SBS–036C).

In SBS–036C, we analyze safety risk as a composite of two factors: The potential ''severity'' or worst possible consequence or outcome of an adverse effect that is assumed to occur, and the ''likelihood'' of occurrence for that specific adverse event. We assess both factors independently and then enter each as separate inputs into a risk matrix, which yields an overall level of risk for the event as Low (acceptable), Medium (acceptable with mitigation), or High (unacceptable). The corrective action, if any, is driven by the assessed overall risk. Figure ES–1 of SBS–036C contains the risk matrix the FAA used for this AD.

The FAA considered an undetected position error event of 0.2 NM or more for a single aircraft as a ''Position error outside containment bound for single aircraft undetected by airborne equipment/ground automation'' hazard, which has a classified severity of ''hazardous'' per Table ES–1 and Appendix B of SBS–036C. Hazardous is defined in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes,*[4] as resulting in a large reduction in safety margins, physical distress or higher workload, or serious or fatal injury to an occupant other than the flight crew. A large position error (0.2 NM or more) may lead to loss of separation, increased ATC workload, a reduction in safety margins, and a near midair collision. These are unsafe conditions that warrant a ''hazardous'' severity level for risk assessment purposes.

From Table ES–1 of SBS–036C, the likelihood of this failure for a properly functioning system was assessed as extremely improbable. Figure ES–1 in SBS–036C is a risk matrix that yields an overall risk based on the severity classification and the assessed likelihood of occurrence. A severity classification of ''hazardous'' and an assessed likelihood of ''extremely improbable'' yields an overall risk of ''Low,'' which is an acceptable risk.

However, the likelihood assessment of ''extremely improbable'' in Table ES–1 is based on the aircraft's GPS receiver having either fault detection or fault detection and exclusion, which is required in order to meet the ADS–B Out position integrity requirements of 14 CFR 91.227. A GPS receiver with fault detection detects a faulty satellite signal and provides an alert of the fault. If the GPS receiver has fault detection and exclusion, it additionally excludes the faulty satellite signal from the position computation. Because the GPS position source in the NavWorx ADS600–B units has no demonstrated fault detection or exclusion features, the FAA determined the appropriate likelihood should be based on the GPS constellation fault rate of 10^{-4} per hour (that is, a probability of 0.0001 occurrences per flight hour). As a result, the FAA elevated the risk of the hazard and assessed a likelihood of ''remote.''[5] Using the severity classification of ''hazardous'' and an assessed likelihood of ''remote'' yields an overall risk of ''High'' in Figure ES–1. This is an unacceptable risk.

These determinations are documented in the meeting minutes from the FAA's Corrective Action Review Board (CARB) held on September 19, 2016. In accordance with FAA Order 8110.107A, *Monitor Safety/Analyze Data,* the CARB considered this safety issue on that date and determined that an unsafe condition existed with the units. This documentation is available for review in Docket No. FAA–2016–9226.

Comment: A few commenters, including NavWorx, noted the FAA approved software revisions 4.0.7, 4.0.8, and 4.0.9, which included the software changes for the units to broadcast a SIL of 3.

FAA Response: The commenters are correct that the FAA approved NavWorx's software changes identified as 4.0.7, 4.0.8, and 4.0.9. However, none of these changes identified on NavWorx's submittals affected the SIL value or referenced the SIL value change in 4.0.6. The FAA's approvals did not alter the FAA's previous written statements to NavWorx advising the equipment must report a SIL of 0 to remain compliant with TSO–C154c. This documentation is available for review in Docket No. FAA–2016–9226.

C. Requests To Allow Alternative Actions

Request: Many commenters, including AOPA, requested that, since the internal GPS is the issue with the NavWorx unit, the AD allow the ADS–B units to use an external GPS position source or, similarly, that the AD not apply to units using an external GPS position source.

FAA Response: We agree. The only external GPS position source approved by the FAA for interface with the ADS600–B is the Accord NexNav mini LRU GPS Receiver P/N 21000 (Accord external GPS).[6] We revised the AD to allow interfacing the ADS–B unit with an Accord external GPS as an optional corrective action. For operators who wish to interface with other external position sources, under the provisions of paragraph (f) of this AD, we will consider requests for approval of an Alternative Method of Compliance (AMOC) if sufficient data is submitted to substantiate that the unit would provide an acceptable level of safety.

Request: Several commenters, including AEA, requested the AD allow disabling the unit rather than removing it.

FAA Response: We agree. We revised the AD to allow disabling the unit as an optional corrective action.

Request: Several commenters, including AOPA, requested the AD allow changing the SIL from 3 to 0 as an alternative to removing the unit.

FAA Response: We agree. We did not include this option in the NPRM because NavWorx has stated it will not provide its customers with software to change the SIL to 0. However, we revised the AD to allow changing the

[4] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/.*

[5] Although the CARB assessed a likelihood of ''remote,'' Figure 2 of AC 23.1309–1E assesses a likelihood between ''remote'' and ''probable,'' depending on the class of aircraft, for a probability of 10 minus;4. Either likelihood classification would yield a High overall risk on the Figure ES–1 risk matrix.

[6] Some commenters stated or implied that other external GPS sources, such as the Garmin 530W, the Garmin GNS 430W, the Garmin GNS 480, and the Garmin GTN 650, are approved for installation in the ADS600–B. Contrary to any documentation these commenters may have from NavWorx, the only FAA-approved external GPS source is the Accord NexNav mini P/N 21000. Documentation of this is available for review in Docket No. FAA–2016–9226.

SIL to 0 as an alternative to removing the unit in the event such software becomes available and is approved by the FAA.

Request: One commenter requested that the AD not apply to units with software versions prior to 4.0.6, because these units broadcast a SIL of 0 and thus are not subject to the unsafe condition.

FAA Response: We agree. We considered excluding units with software prior to version 4.0.6 when we issued the NPRM. We did not exclude them because our understanding of the units is that there is no recordkeeping, marking, or indication from the unit itself that allows an operator to identify the current software version. However, changes to the AD in response to other comments render this exclusion unnecessary.

Request: AOPA requested that we allow the units to remain in service if NavWorx upgrades the internal position source with a position source that meets the requirements of Appendix B to AC 20–165B. Similarly, several commenters requested that we allow NavWorx to re-certify the unit.

FAA Response: We agree. Should NavWorx upgrade its internal position source with a position source that meets the performance requirements of Appendix B to AC 20–165B, or demonstrate that the internal SiRF IV GPS meets those requirements, under the provisions of paragraph (f) of this AD, we will consider requests for approval of an AMOC.

Request: Several commenters requested that we allow more time for compliance. Two of those commenters requested that we delay compliance until 2020, when the ADS–B operational rules become effective.

FAA Response: We agree with extending the compliance time. We determined that safety will be maintained if the corrective actions are implemented within six months of the effective date of the AD, and we revised the AD accordingly.

We disagree with delaying compliance until 2020. The FAA's ADS–B ground station network is already operational and in use by ATC nationwide, and ADS–B In is also widely used in general aviation aircraft for traffic awareness. Therefore, the fact that ADS–B Out will not be required equipment until 2020 does not negate the unsafe condition that exists from those units currently operating in the NAS.

Request: Many commenters requested that the FAA withdraw the NPRM and instead work with NavWorx to address the unsafe condition. Some commenters inferred a failure by the FAA in this regard because it appeared it took the FAA six months to respond to NavWorx's design change notification. A few commenters expressed disappointment and outrage at the FAA's handling of the certification process with NavWorx and requested we constructively and immediately resolve this situation.

FAA Response: We agree it is desirable to work with manufacturers to resolve differences of opinion regarding product compliance and correct identified safety concerns. The FAA made numerous efforts, in a variety of forms and over a considerable period of time, to resolve this situation with NavWorx. Those efforts were unsuccessful.

After receiving NavWorx's design change, the FAA advised NavWorx that it could not manufacture the units as TSO C–154c units because NavWorx had not provided acceptable data to substantiate modifying the SIL value of the internal SiRF IV GPS to 3. Initially, NavWorx agreed to return the SIL to 0 and requested 60 days to effect this change. Instead, over two months later, NavWorx informed the FAA that it would not be returning the SIL value to 0 after all. The FAA continued to advise NavWorx, both verbally and in writing, that the SIL change rendered the units non-compliant with the TSO. The FAA also continued to request that NavWorx voluntarily return the SIL to 0, but NavWorx refused. The FAA met with NavWorx and explained the means of compliance in our existing guidance for certifying the SiRF IV GPS to broadcast a SIL of 3, as well as the process for submitting an alternate or equivalent means of compliance for approval. While NavWorx indicated its desire to initiate one of those processes, it did not. Instead, NavWorx continued to sell and ship the part-numbered 200–0012 and 200–0013 units with the unapproved design change, and continued to furnish product software upgrades through its Web site to existing owners that contained the unapproved design change. When the FAA repeatedly requested to conduct a routine inspection of NavWorx's facility, in part to review NavWorx's units and data supporting its design change, NavWorx refused.

After determining the situation created by NavWorx resulted in an unsafe condition, and without NavWorx's cooperation to correct the unsafe condition, the FAA found it necessary to issue an AD. Documentation of these events is available for review in Docket No. FAA–2016–9226.

Request: One commenter requested the FAA allow a temporary, alternative solution in which operators would periodically validate the units by flight test.

FAA Response: We disagree. Validation flight tests are not engineering tests and are not designed to evaluate the unit's position source integrity. The commenter's requested method of compliance would not correct the unsafe condition.

Request: One commenter requested we exclude ADS–B units that are already installed from the requirements of the AD.

FAA Response: We disagree. The FAA has determined an unsafe condition exists on the affected ADS–B units and that removal or correction of the units is required.

Request: Two commenters request the AD not apply to aircraft operating under visual flight rules (VFR).

FAA Response: We disagree. The FAA has determined that an unsafe condition with the NavWorx units exists and requires corrective action because of the hazard they pose to other users of the NAS. The NavWorx unit broadcasting a SIL of 3, when it is only authorized to broadcast a SIL of 0, has the potential to incorrectly report its own position to other aircraft and to ATC by 0.2 NM or more, without providing an alert. Even in visual meteorological conditions, this could result in the pilot of another aircraft visually searching the wrong sector of sky for the incorrectly reporting ADS600–B-equipped aircraft or incorrectly assessing the ADS600–B-equipped aircraft as not being a collision threat, based on the depicted relative position of the ADS600–B aircraft on its ADS–B In traffic display.

Request: EAA and two individual commenters requested the AD not apply to experimental or light sport aircraft, since they are not regulated in the same manner as type-certificated aircraft. EAA states the FAA should address any valid airworthiness concerns with parts intended for experimental aircraft through a Special Airworthiness Information Bulletin (SAIB) or safety alert for operators (SAFO). Two commenters requested the AD apply to experimental aircraft, because those aircraft operate in the same airspace as type-certificated aircraft and should use equipment with the same integrity. A few commenters, including AOPA, requested we clarify whether the AD applies to experimental aircraft.

FAA Response: We agree to clarify this issue. We confirm that the AD applies to all aircraft, including experimental, and we revised the AD to clarify the applicability. We made this

AD applicable to the ADS600–EXP P/N 200–8013 units because the design of the Model ADS600–EXP P/N 200–8013 is substantially identical to the Model ADS600–B P/N 200–0012 and 200–0013, specifically with regard to the internal GPS and the SIL setting. While some commenters are correct that the FAA has chosen to minimize regulations on experimental aircraft because of the level of the safety risk, these risks normally apply to the individual airplane and do not affect the overall NAS. The safety risks defined in this AD extend beyond one aircraft and could affect many other aircraft as well as ATC. Therefore, we find it necessary to include experimental aircraft in the AD's applicability.

We do not agree that an SAIB or SAFO would be an appropriate solution. These documents contain information and recommended actions that are voluntary and not regulatory. Moreover, an SAIB is issued only for airworthiness concerns that do not rise to the level of an unsafe condition.

The mission of the FAA is aviation safety. ADs are used by the FAA to correct known safety defects. It would be contrary to the intent of the FAA's mission and statutory authority to exclude certain aircraft when we have determined that a part installed on those aircraft has a safety problem.

D. Comments Regarding Costs of Compliance With This AD

Request: Many commenters stated that the cost to comply with this AD is underestimated or inaccurate and requested the FAA revise its cost estimate. These commenters stated the cost should include the cost to replace the unit with a new ADS–B unit and costs associated with loss of utility; should increase the number of labor hours to account for indirect costs such as removal and reinstallation of associated equipment, research, and paperwork; and should increase the labor rate.

FAA Response: We disagree. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD. In this AD, the only required action is the removal of the unit, the deactivation of the unit, the coupling of the unit with an approved external GPS source, or the upgrading of the software in the unit to broadcast a SIL of 0. These actions are estimated to take 1 work-hour each, except for coupling the unit with an approved external GPS source, which is estimated to take about 4 work-hours. The costs of associated required actions such as installing a placard or revising the flight manual are nominal. ADS–B Out equipment is not required for operation until January 1, 2020, and is only required for operation in certain specified airspace after that date. Individual operators are in the best position to determine whether they will need to install this equipment for the airspace they intend to operate in. Therefore, replacement of the unit is not necessary to comply with this AD.

The labor rate of $85 per hour is provided by the FAA Office of Aviation Policy and Plans for the FAA to use when estimating the labor costs of complying with AD requirements.

Request: Several commenters requested the FAA revise its determination that the AD is not a significant regulatory action. One commenter requested the FAA analyze the costs of the AD under the Regulatory Flexibility Act.

FAA Response: We disagree. An AD is economically significant when the cost may have an annual effect on the economy of $100 million or more.[7] Even if we were to include labor for indirect costs and the cost of replacing the unit with a new unit in our estimate, at an estimated cost of $10,000 per aircraft and $8 million for the U.S. fleet over the next three years, the AD would not rise to level of economically significant. In addition, ADs correct identified unsafe conditions, rather than raise an already adequate level of safety, and cannot be assessed in terms of benefits balancing costs, as would be the case for rulemaking that amends airworthiness standards.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The FAA did make such a determination for this AD. The basis for this determination is now discussed.

The FAA uses the Small Business Association (SBA) criteria for determining whether an affected entity is small. For aircraft manufacturers, aviation operators, and any business using an aircraft, the SBA criterion is 1,500 or fewer employees.

NavWorx is a small entity, and this AD could have an adverse impact on its business interests. Besides NavWorx, the largest number of affected small entities would most likely be operators of ADS600–B-equipped aircraft. Based on the estimated number of units in service, and assuming each unit is owned by a different small entity, the largest number of small entities affected is 800.

The FAA estimates that there is a total population of 210,000 general aviation and air taxi aircraft in the United States.[8] Of these, approximately 70,300 (33.5%) are flown primarily for some type of business or commercial use and thus are potentially operated by a small entity. Aircraft flown primarily for personal use would not be operated by a small entity as defined by the SBA.

The FAA assumed all 70,300 commercial use aircraft are operated by small entities and that each small entity operates an average of 6 aircraft,[9] which yields an estimated number of 11,700 small entities. We also assumed that of the 800 affected units, 33.5% (270) are used in commercial operations.[10] This

[7] A "significant regulatory action" is defined in Executive Order 12866 (58 FR 51735, October 4, 1993).

[8] Based on the FAA General Aviation and Air Taxi Activity Survey for calendar year 2015 (the most recent year of data available), table 1.2, General Aviation and Air Taxi Number of Active Aircraft by Primary Use. *http://www.faa.gov/data_research/aviation_data_statistics/general_aviation/CY2015/media/2015_GA_Survey_Chapter_1_Tables_16SEP2016V2.xlsx.*

[9] We based this assumption on the sanction guidance in Appendix B of FAA Order 2150.3B, *FAA Compliance and Enforcement Program,* which classifies air carriers and operators by operating revenue, pilots employed, and aircraft operated for purposes of determining civil penalty amounts. *http://rgl.faa.gov/Regulatory_and_Guidance_Library/.*

[10] This assumption in particular is grossly high. First, some of the affected units are installed on experimental aircraft, which are prohibited from commercial operations and therefore could not be used by a small entity under the RFA. Second, of the approximately 200 comments we received on the NPRM, only six commenters (NavWorx, a charitable aircraft operator, and four avionics installation businesses) could be presumed to be

equates to a maximum of 2.3% (270/11,700) of small entities affected by this rule. This is not a substantial number of small entities under the RFA.

Request: A few commenters requested or implied the FAA fund the costs of the AD.

FAA Response: We disagree. The FAA, as a federal agency, is responsible for all directives, policies, and mandates issued under its authority. Although we have determined that an unsafe condition exists with the design change to the ADS–B unit, the manufacturer is responsible for the design change. Additionally, the FAA's budget does not include allocations to cover AD costs incurred in modifying privately-owned equipment.

E. Comments to the FAA's Rulemaking Process

Request: Several commenters questioned the FAA's motive in proposing the AD. Some believed that the FAA is colluding with other ADS–B manufacturers or industry organizations. Others suggested the FAA is unfairly targeting NavWorx and would not be taking this action if it involved a larger manufacturer. We interpret these comments as requesting we withdraw the NPRM.

FAA Response: We disagree. The FAA has not communicated with any other ADS–B product manufacturer or industry organization regarding the compliance or safety of NavWorx products. In issuing this AD, we followed established policy and procedures, including the public notice and comment procedures of the Administrative Procedures Act, as well as the DOT's *ex parte* policy, which can be found in Appendix 1 to 14 CFR part 11. We placed all *ex parte* comments in the rulemaking docket and considered all comments we received.

We also disagree that we are unfairly targeting NavWorx. We have determined an unsafe condition exists on a NavWorx product and we are requiring corrective action accordingly. If the FAA identifies similar problems and determines that an unsafe condition exists on other ADS–B products, whether manufactured by NavWorx or other companies, we would take appropriate action to correct the unsafe condition.

Request: An individual commenter questioned whether we intended to issue an AD against ADS–B transponders manufactured by Trig or Dynon. According to the commenter, the Trig transponder allows the installer to manually set the SIL value, and the commenter claims installers will improperly set the SIL at 3 to obtain traffic information. The commenter also states the Dynon ADS–B uses the same GPS source that is the subject of this AD.

FAA Response: We are issuing this AD to correct an unsafe condition that we have determined exists on a NavWorx product. This AD is not applicable to Trig Avionics (Trig) or Dynon Avionics (Dynon) ADS–B units. In the case of the older Trig units, installers are responsible for setting the SIL appropriately based on the qualification of the position source used. Additionally, neither the Trig units nor the Dynon units use the SiRF IV position source.

Request: Several commenters noted they purchased a NavWorx unit because the FAA originally listed them as eligible for the ADS–B Rebate Program. We interpret these comments as requesting we withdraw the NPRM.

FAA Response: We have considered the comment. When the FAA rebate program Web site activated, it listed the ADS600–B as an eligible unit without distinction by part number. This was consistent with NavWorx's Web site, *www.navworx.com,* which advertised the ADS600–B for sale without distinguishing between the four different unique transceiver part numbers comprising that model series. P/N 200–0112 and P/N 200–0113 are 2020 compliant, as these units contain a TSO–C145c approved Accord NexNav Mini internal GPS. P/N 200–0012 and P/N 200–0013, which are the subject of this AD, are not 2020 compliant because these units contain the uncertified SiRF IV GPS. Once the FAA rebate program office realized that the P/N 200–0012 and 200–0013 units were not eligible for the rebate, it changed the Web site to identify the ADS600–B model by P/N and listed only the P/N 200–0112 and P/N 200–0113 units as ADS600–B equipment selection options. While the FAA regrets any inconvenience these actions caused, what occurred with the rebate program Web site is not relevant to whether this AD is necessary to resolve the unsafe condition presented by the NavWorx units that improperly transmit a SIL of 3. We did not change the AD based on these comments.

Request: One commenter states the proposed AD is contrary to the FAA's Compliance Philosophy because we did not cooperate with NavWorx or provide NavWorx a reasonable time to work on a corrective action. The commenter requests we withdraw the NPRM, unless we can collect technical data confirming a safety issue, in which case the commenter requests any AD be issued in a non-punitive manner.

FAA Response: We disagree. The FAA's Compliance Philosophy applies to enforcement actions taken for regulatory violations. It does not apply to ADs, which are rulemaking actions taken to correct unsafe conditions found in aeronautical products. Notwithstanding, we also disagree with contentions that we failed to cooperate with NavWorx or provide NavWorx with a reasonable amount of time to correct the unsafe condition. The FAA clearly and repeatedly explained to NavWorx the safety concerns with its ADS–B units and requested that NavWorx voluntarily make the units TSO-compliant. NavWorx's failure to do so created an unsafe condition, for which AD action is necessary.

Comment: An individual commenter stated that owners of experimental aircraft could simply remark the affected part with a new part number so that the AD wouldn't apply. The commenter reasoned that since the builder of an experimental aircraft is also the manufacturer, he could alter the part to a new design and mark it with a new part number.

FAA Response: If the FAA identifies similar problems and determines that an unsafe condition exists on other part-numbered ADS–B products, we would take appropriate action to correct that unsafe condition. Also, simply changing the part number of the unit, without performing any other corrective action, will not correct the unsafe condition that we have determined exists in the unit. Since the unsafe condition remains in the unit, operating an aircraft with such a unit (that has only had the part number modified with no other corrective action taken) would therefore be a violation of 14 CFR 91.7(a), which states that no person may operate a civil aircraft unless it is in an airworthy condition. Any individual taking such action is subject to a civil penalty for a violation of the Federal Aviation Regulations.

F. Comments on the Negative Impact of the FAA's Actions

Request: Several commenters stated that the AD would create confusion or skepticism in the flying community, and will prevent aircraft owners from adopting new technologies promoted by the FAA in the future. Some commenters stated that because of the AD people will quit flying; many others stated aircraft owners will choose to operate without ADS–B equipment. These commenters requested or implied that we withdraw the NPRM.

commercial entities. The remaining comments were submitted by individuals.

FAA Response: We disagree. Although the FAA sympathizes with owners who became early adopters of this technology in good faith and unfortunately are now adversely affected by a situation not of their making, the potential for this action to create skepticism and distrust of the FAA among aircraft owners does not negate the need to correct the identified unsafe condition. The FAA's failure to take action to correct this unsafe condition could lead to accidents, which would also reasonably result in skepticism and distrust of the FAA, not only on the part of the flying community but of the public at large. We did not change the AD based on these comments.

Request: A few commenters stated the FAA created this problem by suddenly and unilaterally changing the operational ADS–B rules to deny TIS–B data to aircraft broadcasting a SIL of 0. Two of these commenters noted that NavWorx initially submitted data to substantiate a SIL of 3, but the FAA refused to grant NavWorx TSO authorization unless the units broadcast a SIL of 0. The commenters request the FAA provide TIS–B data to all aircraft, regardless of SIL.

FAA Response: We disagree. The FAA's changes to only provide TIS–B services to aircraft broadcasting a SIL greater than 0 were neither sudden nor unilateral. The changes were announced on March 31, 2015, and became effective in early 2016.[11] However, they were initiated several years prior, as the result of an FAA study to determine a low risk, cost-effective, technically beneficial strategy for modification of the FAA TIS–B service. During this study, we consulted with the current manufacturers of ADS–B systems (both certified and uncertified) designed to use TIS–B information, including Accord Technologies, Dynon, FreeFlight Systems, Garmin, Honeywell, NavWorx, Rockwell Collins, and Trig. Like other manufacturers, NavWorx had the opportunity to make and obtain approval for appropriate design changes to its equipment so its customers could receive TIS–B traffic after the service change. NavWorx chose instead to only change the SIL setting from 0 to 3 in software without demonstrating the existing GPS position source's qualification to broadcast of a SIL of 3. Since that time, the FAA has been requesting NavWorx submit testing data supporting its conclusion that the SiRF IV GPS meets the performance requirements to broadcast a SIL of 3. NavWorx has not provided the FAA with this data.

We also disagree with the contention that NavWorx initially submitted data to substantiate a SIL of 3. NavWorx's TSO-authorized design for its P/N 200–0012 and P/N 200–0013 ADS–B units has always identified the internal GPS source for those units as an uncertified SiRF IV GPS. The SiRF IV is not manufactured under an FAA TSO. The FAA approved this equipment and its installation to transmit a SIL of 0 because that is what is required by RTCA Document DO–282B (the performance standard for TSO–C154c and the NavWorx units) and AC 20–165B.

The commenters' request to provide TIS–B data to all aircraft, regardless of SIL, would not correct the unsafe condition. We did not change the AD based on these comments.

G. Comments Beyond the Scope of the NPRM

Request: A few commenters expressed disagreements with the ADS–B mandate. One commenter stated compliance with the rule would put him out of business, because he did not fly often enough to justify the cost. Another commenter requested the mandate not apply to aircraft operating under VFR in certain airspace. The third commenter stated that because of the mandate, the FAA is unable to manage the increase in ADS–B technology development or deal with the market.

FAA Response: Comments about the 2020 mandate are beyond the scope of this AD. The rules mandating ADS–B Out usage, 14 CFR 91.225 and 91.227, were promulgated through notice and comment rulemaking that began with an aviation rulemaking committee. An NPRM was issued in 2007 (72 FR 56947, October 5, 2007) and the comment period was subsequently re-opened for an additional 30 days in 2008 (73 FR 57270, October 2, 2008). The final rule published on May 28, 2010 (75 FR 30160) and considered approximately 240 comments from air carriers, manufacturers, associations, and individuals. All documentation of this rulemaking is available for review in Docket No. FAA–2007–29305.

Request: Some commenters requested or implied they should be given until 2025 to comply with the AD because compliance with the ADS–B mandate is not required for air carriers until 2025.

FAA Response: Comments about the 2020 mandate are beyond the scope of this AD. It appears the commenters are referring to Exemption No. 12555, which is not a blanket 5-year extension for all air carriers. Exemption No. 12555 applies only to those operators who submit a request to use it and who comply with its conditions and limitations. Exemption No. 12555 allows the use of current ADS–B Out systems that are not fully compliant with the rule until fully compliant systems are installed on or before January 1, 2025. Documentation concerning Exemption No. 12555 is available for review in Docket No. FAA–2015–0971.

Comment: One commenter described a safety of flight issue he encountered with a Garmin ADS–B transponder that he has previously reported to the FAA.

FAA Response: The comment is not relevant to whether this AD is necessary to correct the unsafe condition presented by the NavWorx ADS–B units broadcasting a SIL of 0. We did not change the AD based on this comment.

Comment: A few commenters expressed criticism of the FAA in general, without requesting specific changes to this AD.

FAA Response: The comments are not relevant to whether this AD is necessary to correct the unsafe condition presented by the NavWorx ADS–B units broadcasting a SIL of 0. We did not change the AD based on these comments.

FAA's Determination

We have reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other products of this same type design and that air safety and the public interest require adopting the AD requirements as proposed with the changes described previously. These changes are consistent with the intent of the proposals in the NPRM (81 FR 72552, October 20, 2016) and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information

We reviewed NavWorx AFMS for ADS600–B as installed under STC No. SA11172SC, approved May 4, 2014; NavWorx Installation Manual for ADS600–B Part 23 AML STC 240–0021–00–07, Revision 7, dated May 4, 2014; and NavWorx STC Master Drawing List 240–0013–00, Revision 10, dated May 29, 2014. This service information identifies the internal GPS position source for the NavWorx Model ADS600–B P/N 200–0012 and P/N 200–0013 as uncertified and not compliant with 14 CFR 91.225 and 91.227.

[11] A copy of the FAA's announcement of its decision to make changes to the TIS–B service is available for review in Docket No. FAA–2016–9226.

Costs of Compliance

We estimate that this AD affects approximately 800 ADS–B units installed on various aircraft of U.S. registry. Operators may incur the following costs in order to comply with this AD based on an average labor rate of $85 per work-hour. Removing the ADS–B unit, disabling the ADS–B unit, or revising the software of the ADS–B unit will take about 1 work-hour, for a total of $85 per aircraft. Coupling the ADS–B unit with an approved external GPS will take about 4 work-hours for a total of $340 per aircraft.

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):

2017–11–11 NavWorx, Inc.: Amendment 39–18910; Docket No. FAA–2016–9226; Directorate Identifier 2016–SW–065–AD.

(a) Applicability

This AD applies to the following NavWorx, Inc., Automatic Dependent Surveillance-Broadcast (ADS–B) Universal Access Transceiver units (unit) installed on aircraft certificated in any category, including experimental:

(1) Model ADS600–B part number (P/N) 200–0012;

(2) Model ADS600–B P/N 200–0013; and

(3) Model ADS600–EXP P/N 200–8013.

(b) Unsafe Condition

This AD defines the unsafe condition as an ADS–B unit incorrectly broadcasting a Source Integrity Level (SIL) of 3 instead of its authorized SIL of 0. This condition could result in the unit communicating unreliable position information to Air Traffic Control and nearby aircraft and a subsequent aircraft collision.

(c) Effective Date

This AD becomes effective July 11, 2017.

(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 6 months, comply with either paragraph (e)(1)(i), (ii), (iii), or (iv) of this AD:

(i) Remove the ADS–B unit.

(ii) Disable and prohibit use of the ADS–B unit as follows:

(A) Pull and secure the circuit breaker and disconnect the internal GPS antenna connector from the ADS–B unit and secure.

(B) Install a placard in view of the pilot that states ''USING THE ADS–B SYSTEM IS PROHIBITED.''

(C) Revise the Limitations section of the Aircraft Flight Manual supplement (AFMS) by inserting a copy of this AD or by making pen-and-ink changes to add the following: ''USING THE ADS–B SYSTEM IS PROHIBITED.''

(iii) Revise the software so the ADS–B unit broadcasts a SIL of 0.

(iv) Couple the ADS–B unit with an approved external GPS as follows:

(A) Interface the ADS–B unit with an Accord NexNav mini LRU GPS Receiver P/N 21000.

(B) Revise the Limitations section of the AFMS by inserting a copy of this AD or by making pen-and-ink changes to add the following: ''OPERATION USING THE INTERNAL POSITION SOURCE IS PROHIBITED. USE OF THE ACCORD NEXNAV MINI P/N 21000 EXTERNAL POSITION SOURCE IS REQUIRED.''

(2) After the effective date of this AD, do not install an ADS–B unit Model ADS600–B P/N 200–0012, Model ADS600–B P/N 200–0013, or Model ADS600–EXP P/N 200–8013 on any aircraft unless you have complied with the requirements of paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kyle Cobble, Aviation Safety Engineer, Fort Worth Aircraft Certification Office, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177, telephone (817) 222–5172, email *kyle.cobble@faa.gov;* or Michael Heusser, Program Manager, Continued Operational Safety Branch, Fort Worth Aircraft Certification Office, Rotorcraft Directorate, 10101 Hillwood Pkwy, Fort Worth, TX 76177, telephone (817) 222–5038, email *michael.a.heusser@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.

(g) Additional Information

NavWorx Airplane Flight Manual Supplement for ADS600–B as installed under Supplemental Type Certificate (STC) No. SA11172SC, approved May 4, 2014; NavWorx Installation Manual for ADS600–B Part 23 AML STC 240–0021–00–07, Revision 7, dated May 4, 2014; and NavWorx STC Master Drawing List 240–0013–00, Revision 10, dated May 29, 2014, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact NavWorx Inc.; telephone (888) 628–9679; email: *support@navworx.com* or at *www.navworx.com.* You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3452, ATC Transponder System.

Issued in Fort Worth, Texas, on May 30, 2017.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2017–11625 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8179; Directorate Identifier 2015–NM–201–AD; Amendment 39–18913; AD 2017–11–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–26–03, which applied to certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2011–26–03 required installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. This AD requires certain inspections for certain airplanes, corrective actions if necessary, and installation of Teflon sleeves under certain wire bundle clamps. This AD was prompted by a report indicating that additional airplanes are affected by the identified unsafe condition. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 11, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 11, 2017.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 20, 2011 (75 FR 78588, December 16, 2010).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8179.

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–2016–8179; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, 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: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *takahisa.kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–26–03, Amendment 39–16893 (76 FR 78138, December 16, 2011) (''AD 2011–26–03''). AD 2011–26–03 applied to certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. The NPRM published in the **Federal Register** on July 20, 2016 (81 FR 47084). The NPRM was prompted by a report indicating that additional airplanes are affected by the identified unsafe condition. The NPRM proposed to continue to require installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. The NPRM also proposed to revise the applicability by adding The Boeing Company Model 777F series airplanes. The NPRM also proposed to add, for certain airplanes, detailed inspections of certain wire bundle clamps, certain Teflon sleeves, and certain fasteners; corrective actions if necessary; and installation of Teflon sleeves under certain wire bundle clamps. We are issuing this AD to prevent arcing inside the main and center fuel tanks in the event of a fault current or lightning strike, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Comments

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

Request To Withdraw the NPRM

Boeing requested that we withdraw the NPRM. The commenter stated that the actions proposed by the NPRM are no longer necessary, since the unsafe condition is adequately addressed by repetitive inspections required by the electrical wiring interconnection system (EWIS) enhanced zonal analysis procedure (EZAP) inspection program required by 14 CFR part 26. The commenter pointed out that, since the time this issue was determined to be a safety issue, the exposure assumed under the safety assessment has changed due to the inspection program. The commenter stated that the safety concern was that the failure of multiple protective design features for wiring installations could be a single cascading failure since the exposure was the life of the airplane. The commenter stated that since the implementation of the EWIS EZAP inspections, where the interval is now 6 years, this is no longer considered to be a single failure as the exposure has been reduced to where the wiring and installation is not expected to fail in this inspection interval and any potential wear would be detected and would be repaired or removed and replaced in accordance with maintenance activities.

We disagree to withdraw the NPRM. The EWIS EZAP repetitive inspection program is implemented by FAA operating rules (14 CFR 121.1111 or 14 CFR 129.111), which are applicable only to operators that are required to comply with those operating rules. The FAA is obligated to advise foreign airworthiness authorities of unsafe conditions identified in products manufactured in the United States, including Boeing airplanes, in accordance with bilateral airworthiness agreements with countries around the world. The issuance of ADs is the means by which the FAA satisfies this obligation. Even if the FAA agreed that the actions required by 14 CFR 121.1111 and 14 CFR 129.111 adequately addressed the unsafe condition, the FAA would still issue this AD to address airplanes that may

not be operated in accordance with those requirements. Additionally, the FAA does not agree that the EWIS EZAP repetitive inspection program has been demonstrated as sufficient to allow a determination that chafing through the wire insulation of the unmodified (pre-AD) configuration is not a foreseeable single failure. The FAA understands that the EWIS EZAP repetitive inspection program interval for this area was determined based on a later modified design, and that design has additional Teflon sleeving. For these reasons, we have made no change to this final rule in this regard.

Request for Clarification of Safety Evaluation Criteria

Boeing requested that we clarify the use of ''unacceptable (failure) experience'' in the Discussion section of the NPRM and that was used as a safety evaluation criterion under Special Federal Aviation Regulation No. 88 (SFAR 88). The commenter requested better definition of ''unacceptable (failure) experience'' or the addition of detailed guidance that defines how to identify an ''unacceptable (failure) experience.'' The commenter also indicated that Boeing airplanes at the time of design approval are intended to meet all applicable regulations including 14 CFR 25.601, which specifically prohibits hazardous or unreliable features.

We agree that clarification is necessary. To provide standardized policy for determining the need for mandatory action relative to the finding from the fuel system safety review required by SFAR 88, the FAA issued Memorandum 2003–112–15, SFAR 88—Mandatory Action Decision Criteria, dated February 25, 2003. One of the criteria provided in the policy memo is that, for any tank (either high or low flammability exposure time), all failures identified in service, that result in thermal or electrical energy dissipation into the fuel tank system, which could create an ignition hazard, or that make fuel tank safety protection devices inoperative (*e.g.,* fuel pump canister, wire sleeving, bonding lead), are considered unsafe conditions and must be addressed by corrective action (*i.e.,* AD). This criterion is independent of any compliance showing or finding previously made as part of a type certification program. The policy memo criteria are mentioned in the Discussion section of each NPRM that resulted from an SFAR 88 unsafe condition determination. Additionally, the NPRM Discussion is not repeated in the final rule, so no change to this final rule is necessary in this regard.

Request for Clarification of Credit for Actions Accomplished Previously

Boeing requested that we revise paragraph (l) of the proposed AD so that it is clear that credit will be given for past work that has already been accomplished on other Boeing Model 777 airplanes. No justification was provided, however, the commenter stated that the NPRM is adding the missing airplanes and it uses the latest service information to reset the method of compliance.

We infer that the commenter is requesting clarification for taking credit for actions required by paragraph (g)(l) of this AD using earlier revisions of the service information. Paragraph (l)(1) of this AD provides credit for actions accomplished before January 20, 2011 (the effective date of AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010) (''AD 2010–24–12'')), using service information revisions earlier than Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, required by paragraph (g)(1) of AD 2010–24–12. Accomplishing the actions using Boeing Service Bulletin 777–57A0050, Revision 3, dated February 18, 2014, has been approved as an alternative method of compliance (AMOC) for paragraph (g)(l) of AD 2011–26–03, and AMOCs approved previously for AD 2011–26–03 are approved as AMOCs for the corresponding provisions of this AD as specified in paragraph (m)(4) of this AD. After the effective date of this AD, only Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015 is allowed for compliance with paragraph (g)(l) of this AD. Paragraphs (i) and (j) of this AD require actions for airplanes not covered in paragraph (g)(l) of this AD and also require additional actions for those airplanes that accomplished the actions required by paragraph (g)(l) of this AD using service bulletin revisions earlier than Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Therefore, no credit is provided for actions required by paragraphs (i) and (j) of this AD using service bulletin revisions earlier than Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. We have not changed this AD in this regard.

Request To Simplify Compliance Implementation Time Frame

Boeing requested that we revise paragraphs (i), (j), and (k) of the proposed AD to simplify the AD compliance implementation time frame. The commenter stated that the NPRM sets the requirements to be completed within 60 months of different revisions of different documents with an exception specified in paragraph (k) of the proposed AD, and that the proposed requirements were cumbersome and unclear. The commenter did not provide any explanation of how the paragraphs should be revised.

We agree that clarification is necessary. The NPRM proposed to supersede AD 2011–26–03 and added new requirements in paragraphs (i) and (j) of this AD. Paragraph (k) of this AD provides exceptions to the service information. For the new requirements in this AD, the FAA has determined that the compliance times are reasonable based on consideration of the risk level associated with the unsafe condition and the time necessary to perform the work. In addition, the compliance times in paragraphs (i) and (j) of this AD do not refer to any service documents (both paragraphs refer to Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, as the appropriate source of service information for accomplishing the actions in those paragraphs). Therefore, we have determined that the requirements of this AD are adequate and clear. We have not changed this AD in this regard.

Clarification of Service Information Requirement

Under the ''Differences Between This Proposed AD and the Service Information'' section of the NPRM, we noted that the corrections to group applicability for ''WORK PACKAGE 21: More Work: Rear Spar Wire Bundle Teflon Sleeve Installation,'' Figure 3, and Figure 100 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, were included in paragraphs (k)(1), (k)(2), and (k)(3) of the proposed AD. Paragraph (k)(1) of this AD specifies that WORK PACKAGE 21 applies to Groups 5 through 43 (including Configurations 1 and 2) to correct the error in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, which only identifies Configuration 2 of Groups 5 through 43 as applicable. Paragraph (k)(1) of this AD, which is referenced by paragraph (j) of this AD, is intended to clarify the airplanes affected by the requirements specified in paragraph (j) of this AD. To further clarify this aspect, we have revised paragraph (j) of this AD to specifically reference Groups 5 through 43, Configurations 1 and 2 airplanes.

We have also revised paragraph (m)(4) of this AD to accept AMOCs approved previously for AD 2010–24–12 as

AMOCs for the corresponding provisions of this AD.

Clarification of Unsafe Condition

We have revised the Discussion section of this final rule and paragraph (e) of this AD to clarify that we are issuing this AD to address arcing inside the main and center fuel tanks in the event of a fault current or lightning strike, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. The service information describes procedures for installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. The service information also describes detailed inspections of certain wire bundle clamps, certain Teflon sleeves, and certain fasteners; corrective actions if necessary; and installation of Teflon sleeves under certain wire bundle clamps. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 182 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install Teflon sleeving and cap sealing (retained actions from AD 2011–26–03).	Up to 358 work-hours × $85 per hour = $30,430.	$2,241	Up to $32,671	Up to $5,946,122.
Detailed inspections and installation of Teflon sleeves (new actions).	Up to 53 work-hours × $85 per hour = $4,505.	(1)	Up to $4,505	Up to $819,910.

[1] We have received no definitive data that would enable us to provide parts cost estimates for the installation of Teflon sleeves (new action) specified in this AD.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–26–03, Amendment 39–16893 (76 FR 78138, December 16, 2011), and adding the following new AD:

2017–11–14 The Boeing Company: Amendment 39–18913; Docket No. FAA–2016–8179; Directorate Identifier 2015–NM–201–AD.

(a) Effective Date

This AD is effective July 11, 2017.

(b) Affected ADs

This AD replaces AD 2011–26–03, Amendment 39–16893 (76 FR 78138, December 16, 2011) (''AD 2011–26–03'').

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in the applicable service information specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) For The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F airplanes: Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015.

(2) For The Boeing Company Model 777–200 and –300 airplanes: Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For The Boeing Company Model 777–200, –300, and –300ER airplanes: Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007.

(4) For The Boeing Company Model 777–200, –200LR, –300, and –300ER airplanes:

Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing inside the main and center fuel tanks in the event of a fault current or lightning strike, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Corrective Actions (Installing Teflon Sleeving, Cap Sealing, One-Time Inspection), With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2011–26–03, with revised service information. Within 60 months after January 20, 2011 (the effective date of AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010) (''AD 2010–24–12'')), do the applicable actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, except as required by paragraph (k)(2) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009: Install Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009; or Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. As of the effective date of this AD, only Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, may be used to accomplish the actions required by this paragraph.

(2) For airplanes identified in Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006: Cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For airplanes identified in Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007: Do a general visual inspection to determine if certain fasteners are cap sealed, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007. Do all applicable corrective actions before further flight.

(4) For Model 777–200, –300, and –300ER airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(h) Retained Cap Sealing the Fasteners, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2011–26–03, with no changes. For Model 777–200LR airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Within 60 months after January 3, 2012 (the effective date of AD 2011–26–03), cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(i) New Detailed Inspection and Corrective Actions

For Group 1, Configurations 2 through 4 airplanes; Groups 2 through 4, Configurations 3 through 5 airplanes; Groups 5 through 43, Configuration 1 airplanes; and Groups 44 and 45 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, except as required by paragraph (k)(2) of this AD.

(1) For Group 1, Configurations 2 through 4 airplanes; Groups 2 through 4, Configurations 3 through 5 airplanes; Groups 5 through 43, Configuration 1 airplanes; and Groups 44 and 45 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Do a detailed inspection for installation of Teflon sleeves under certain wire bundle clamps, as applicable; a detailed inspection to determine the type of wire bundle clamp; and all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Do all applicable corrective actions before further flight.

(2) For Group 1, Configurations 2 through 4 airplanes; and Groups 2 through 4, Configurations 3 through 5 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Do a detailed inspection for correct installation of certain Teflon sleeves, as applicable; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Do all applicable corrective actions before further flight.

(3) For Group 1, Configurations 2 through 4 airplanes; and Groups 2 through 4, Configurations 3 through 5 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Do a detailed inspection for cap sealing of certain fasteners, as applicable; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Do all applicable corrective actions before further flight.

(j) New Installation of Teflon Sleeves

For Group 1, Configurations 2 through 5 airplanes; Groups 2 through 4, Configurations 3 through 6 airplanes; and Groups 5 through 43, Configurations 1 and 2 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Within 60 months after the effective date of this AD, install Teflon sleeves under certain wire bundle clamps, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, except as required by paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(k) Exceptions to the Service Information

(1) Where ''WORK PACKAGE 21: More Work: Rear Spar Wire Bundle Teflon sleeve Installation'' of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, specifies ''Groups 5 through 43, Configuration 2,'' for this AD, ''WORK PACKAGE 21: More Work: Rear Spar Wire Bundle Teflon sleeve Installation'' of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, applies to all configurations of Groups 5 through 43 airplanes.

(2) Where Figure 3 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, specifies ''Groups 1 through 7, and 9 through 43,'' for this AD, Figure 3 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, applies to Groups 1 through 43 airplanes.

(3) Where Figure 100 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, specifies ''Groups 5 through 43, Configuration 2,'' for this AD, Figure 100 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, applies to all configurations of Groups 5 through 43 airplanes.

(l) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g)(1) of this AD, if those actions were performed before January 20, 2011 (the effective date of AD 2010–24–12), using Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; or Boeing Alert Service Bulletin 777–57A0050, Revision 1, dated August 2, 2007; provided that the applicable additional work specified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, is done within the compliance time specified in paragraph (g) of this AD. The additional work must be done in accordance with Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) This paragraph provides credit for the actions specified in paragraph (g)(3) of this AD, if those actions were performed before January 20, 2011 (the effective date of AD 2010–24–12), using Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006.

(m) Alternative Methods of Compliance (AMOCs)

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

attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCs approved previously for AD 2011–26–03 and AD 2010–24–12 are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *takahisa.kobayashi@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(5) and (o)(6) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 11, 2017.

(i) Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on January 20, 2011 (75 FR 78588, December 16, 2010).

(i) Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(ii) Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007.

(iii) Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(iv) Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

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

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11291 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9285; Airspace Docket No. 16–ANE–2]

Amendment of Class E Airspace, Bar Harbor, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action amends Class E airspace at Bar Harbor, ME, by removing the part-time status of the Class E surface airspace at Hancock County-Bar Harbor Airport. The boundaries and operating requirements of these airspace areas remain the same. This action also updates the airport's geographic coordinates and corrects the airport name in the airspace designation.

DATES: Effective 0901 UTC, August 17, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Hancock County-Bar Harbor Airport, Bar Harbor, ME, to support IFR operations under standard instrument approach procedures at the airport.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by removing the part-time status of the Class E surface airspace, and updating the geographic coordinates of Hancock County-Bar Harbor Airport, Bar Harbor, ME, to be in concert with the FAA's aeronautical database. Also, the airport's name was misspelled in the descriptor title. This action corrects that error.

This is an administrative change and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ANE ME E2 Bar Harbor, ME [Amended]

Hancock County-Bar Harbor Airport, ME
(Lat. 44°26′59″ N., long. 68°21′42″ W.)

Within a 4.2-mile radius of Hancock County-Bar Harbor Airport, and within 2.7 miles each side of a 204° bearing from the airport, extending from the 4.2-mile radius to 6.2 miles southwest of the airport, and within 2.7 miles each side of a 024° bearing from the airport, extending from the 4.2-mile radius to 6.2 miles northeast of the airport.

Issued in College Park, Georgia, on May 19, 2017.

Ryan W. Almasy,

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

[FR Doc. 2017–11386 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9443; Airspace Docket No. 16–ASO–17]

Amendment of Class E Airspace; Kyle-Oakley Field Airport, Murray, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Murray, KY, as the Calloway non-directional beacon (NDB) has been decommissioned, requiring airspace reconfiguration at Kyle-Oakley Field Airport. This action enhances the safety and airspace management of instrument flight rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport and updates the airspace designation header.

DATES: Effective 0901 UTC, August 17, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 1–(800)–647–8927, or (202)–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202)–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface at Kyle-Oakley Field Airport, Murray, KY, for continued safety and management of IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking (NPRM in the **Federal Register** (82 FR 4221, January 13, 2017) Docket No. FAA–2016–9443 to amend Class E airspace extending upward from 700 feet above the surface at Kyle-Oakley Field Airport, Murray, KY, due to the decommissioning of the Calloway NDB and cancellation of the NDB approach. The NPRM also advised of the proposed amendment of the airport's geographic coordinates and the airport designation header to include the airport name. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as

listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Kyle-Oakley Field Airport, Murray, KY, due to the decommissioning of the Calloway NDB and cancellation of the NDB approach. Therefore, these changes are necessary for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport are amended to coincide with the FAAs aeronautical database, and the airport designation header, as noted in FAA Order 7400.11A, is updated to include the airport name.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO KY E5 Kyle-Oakley Field, Murray, KY [Amended]

Kyle-Oakley Field Airport, KY
(Lat. 36°39′52″ N., long. 88°22′22″ W.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Kyle-Oakley Field Airport.

Issued in College Park, Georgia, on May 19, 2017.

Ryan W. Almasy,

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

[FR Doc. 2017–11377 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0207]

RIN 1625–AA08

Special Local Regulation; Coos Bay, North Bend, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated area during the inbound and outbound transit of the tall ships participating in the Festival of Sail to be held on the waters of Coos Bay. This action is necessary to safeguard participants and spectators from the hazards associated with the limited maneuverability of the tall ships and to ensure public safety during their transit. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the patrol commander or a designated representative.

DATES: This rule is effective without actual notice from June 6, 2017 through June 5, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed, May 31, 2017, through June 6, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG-2017-0207 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Laura Springer, MSU Portland Waterways; 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On June 1, 2017, and again on June 5, 2017, several class A and B tall sailing ships will be transiting the waters of Coos Bay as part of the Festival of Sail Coos Bay. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Coos Bay, North Bend, OR. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended May 15, 2017, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impractical as it would prevent the Coast Guard from ensuring the safety of participants, spectators, support and transiting vessels during the transit of the sailing ships and immediate action is necessary to prevent possible loss of life and property.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Columbia River has determined that potential hazards exist with the limited maneuverability of tall sailing ships. Many other factors amplify the potential hazards of the situation, including: Large numbers of recreational and fishing vessels; a narrow channel; and, limited maneuverability of the tall ships. The purpose of this rule is to ensure safety of participants, spectators, support and transiting vessels during the inbound and outbound transits.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 13, 2017. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary regulated area during the inbound and outbound transit of the tall sailing ships participating in the Festival of Sail to be held on the waters of Coos Bay. The regulated area will be all navigable waters of Coos Bay, from the sea buoy to the Ferndale Lower Range in North Bend, OR. The duration of the regulated area is intended to ensure the safety of participants, spectators, support and transiting vessels, during the tall ships' inbound and outbound transits. No vessel or person would be permitted to enter the regulated area without obtaining permission from the patrol commander or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. Although this proposal would prevent traffic from transiting portions of Coos Bay, the effect of this regulation would not be significant due to the limited duration that the regulated area will be in effect and the fact that the patrol commander may allow waterway users to enter or transit through the zone when deemed safe to do so. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 to notify mariners about the regulated area.

B. Impact on Small Entities

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

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

While some owners or operators of vessels intending to transit the regulated area 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 Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a Special Local Regulation for a regulated area lasting less than 3 hours during each transit period that will prohibit vessels from entering an area encompassing Coos Bay from the sea buoy to the Ferndale Lower Range unless given permission to do so by the on-scene patrol commander or his designated representative. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.1D. A Record of Environmental Consideration and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 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: 33 U.S.C. 1233.

■ 2. Add § 100.T13–0207 to read as follows:

§ 100.T13–0207 Special Local Regulations; Festival of Sail Coos Bay.

(a) *Regulated Area.* The following area is designated as a regulated area: All navigable waters of Coos Bay, from the sea buoy to the Ferndale Lower Range.

(b) *Special Local Regulations.* (1) The Coast Guard may patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (PATCOM). PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Columbia River.

(2) Entrance into the regulated area is prohibited unless authorized by the PATCOM. The PATCOM may control the movement of all vessels in the regulated area. When hailed or signaled to stop by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(3) All vessels permitted to transit the regulated area shall maintain a separation of at least 100 yards away from the participating tall sailing ships and a distance of at least 50 yards away while transiting in the vicinity of the McCullough Memorial Bridge and the Coos Bay railroad bridge.

(c) *Enforcement Period.* This regulated area is in effect while the tall sailing ships are transiting Coos Bay, inbound on June 1, 2017 and outbound on June 5, 2017.

Dated: May 31, 2017.

B.C. McPherson,

Captain, U.S. Coast Guard, Acting Commander, Coast Guard Thirteenth District.

[FR Doc. 2017–11634 Filed 6–5–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0300]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Minneapolis and St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Upper Mississippi River (UMR) between miles 846 and 847. This action is necessary to provide for the safety of life on these navigable waters near Minneapolis and St. Paul, MN during a rope pull event on June 10, 2017. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during a rope pull event across the UMR. During the period of enforcement, entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective from 10 a.m. to 3 p.m. on June 10, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0300 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by June 10, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

During the hours of 10 a.m. to 3 p.m. on June 10, 2017, the sponsors of the ''Pulling Together'' event will be stretching a rope across the UMR from Minneapolis, MN to St. Paul, MN at river mile 846.5 for multiple tug-of-war competitions. After full review of the details for event, the Coast Guard determined action is needed to protect people and property from the safety hazards associated with the rope pull event across the UMR in Minneapolis and St. Paul, MN.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule is contrary to the public interest as it would delay the security measures necessary to respond to potential safety hazards associated with the planned rope pull event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the rope pull event will be a safety concern before, during, and after the event. The purpose of this rule is to ensure safety of vessels, people and property on the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 a.m. to 3 p.m. on June 10, 2017. The safety zone will cover all navigable waters between miles 846 and 847 on the Upper Mississippi River (UMR) in Minneapolis and St. Paul, MN. Exact times of the closures and any changes to the planned schedule will be communicated to mariners using Broadcast and Local Notice to Mariners. There are at least two planned intermissions to the event, during which an event boat will be tending the rope to allow for vessel traffic to pass through the area of the closure, thus limiting the impact to vessel traffic affected by the closure. The safety zone is intended to ensure the safety of vessels on these navigable waters before, during and after the rope pull event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the Captain of the Port Upper Mississippi River (COTP) or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This temporary final rule establishes a safety zone impacting a one mile area on the UMR for a limited time period of five hours. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP or other designated representative. Based on the location, limited safety zone area, and short duration of the enforcement period, this rule does not pose a significant regulatory impact. Additionally, notice of the safety zone or any changes in the planned schedule will be made via Broadcast and Local Notice to Mariners. Entry into this safety zone may be requested from the COTP or other designated representative and will be considered on a case-by-case basis.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting five hours that will prohibit entry from mile 846 to 847 on the UMR on June 10, 2017. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration are 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: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0300 to read as follows:

§ 165.T08–0300 Safety Zone; Upper Mississippi River, Minneapolis and St. Paul, MN.

(a) *Location.* The following area is a safety zone: All navigable waters of the Upper Mississippi River between miles 846 and 847, Minneapolis and St. Paul, MN.

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

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

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

(d) *Effective period.* This section will be effective from 10 a.m. to 3 p.m. on June 10, 2017.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: May 31, 2017.

M.L. Malloy,

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

[FR Doc. 2017–11621 Filed 6–5–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0390]

Safety Zone; PUSH Beaver County/Beaver County Boom, Ohio River, Miles 25.2 to 25.6, Beaver, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the subject safety zone for the PUSH Beaver County/Beaver County Boom Fireworks on the Ohio River. The zone is needed to protect vessels transiting the area and event spectators from the hazards associated with the PUSH Beaver County/Beaver County Boom barge-based firework display. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

DATES: The regulations in Table 1 in 33 CFR 165.801, No. 45, will be enforced from 8:30 p.m. until 10:30 p.m., on June 24, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual PUSH Beaver County/Beaver County Boom Fireworks listed in the regulations in Table 1 in 33 CFR 165.801, No. 45, from 8:30 p.m. to 10:30 p.m. on June 24, 2017. The safety zone extends the entire width of the Ohio River from mile 25.2 to 25.6. The zone is needed to protect vessels transiting the area and event spectators from the hazards associated with the PUSH Beaver County/Beaver County Boom barge-based firework display. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the COTP or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.801 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Local Notice to Mariners

and updates via Marine Information Broadcasts.

L. Mcclain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2017–11620 Filed 6–5–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0011]

RIN 1625–AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its safety zones regulations that take place in the Coast Guard Sector Ohio Valley area. This informs the public of regularly scheduled events that require additional safety measures through the establishing of a safety zone. Through this rulemaking the current list of recurring safety zones is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these safety zones are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective June 6, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0011 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Captain of the Port Ohio Valley (COTP) is establishing, amending, and updating 33 CFR 165.801 to update our regulations for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones with respect to those in Sector Ohio Valley. These events include air shows, fireworks displays, and other marine related events requiring a limited access area restricting vessel traffic for safety purposes.

On March 30, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Sector Ohio Valley Annual and Recurring Safety Zones Update'' (82 FR 15666). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to those recurring safety zones. The public comment period ended on May 1, 2017. During the comment period, we did not receive any comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. It would be impracticable to provide a full 30-days notice because this rule must be effective June 03, 2017.

III. Legal Authority and Need for Rule

The Coast Guard's authority for establishing a safety zone is contained at 33 U.S.C. 1231. The Coast Guard is amending and updating the safety zones under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include fireworks displays, air shows, and others. The current list in 33 CFR 165.801 requires amending to provide new information on existing safety zones, include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring safety zones.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on March 30, 2017. There are no changes in the regulatory text of this rule from the proposed rule on the NPRM.

This rule amends and updates part 165 or 33 CFR by revising the current table for Sector Ohio Valley, and by adding 5 new recurring safety zones and removing 1 safety zone as desired in the NPRM. Vessels intending to transit the designated waterway through the safety zone will only be allowed to transit the area when the COTP, or a designated representative, has deemed it safe to do so or at the completion of the event.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes safety zones limiting access to certain areas under 33 CFR part 165 within Sector Ohio Valley's AOR. The effect of this rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan around the safety zones in advance. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these safety zones. Vessel traffic may request permission from the COTP or a designated representative to enter the restricted areas.

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 0 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 IV.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. 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 Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(g) of the Instruction because it involves the establishment of safety zones. A Record of Environmental Consideration (REC) 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.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.801, revise the first table to read as follows:

§ 165.801 Annual Fireworks displays and other events in the Eighth Coast Guard District recurring safety zones.

* * * * *

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
1. Multiple days—April through November.	Pittsburgh Pirates/Pittsburgh Pirates Fireworks.	Pittsburgh, PA	Allegheny River, Mile 0.2–0.9 (Pennsylvania).
2. Multiple days—April through November.	Cincinnati Reds/Cincinnati Reds Season Fireworks.	Cincinnati, OH	Ohio River, Mile 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
3. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville/Thunder Over Louisville.	Louisville, KY	Ohio River, Mile 602.0–606.0 (Kentucky).
4. Last Sunday in May	Friends of Ironton	Ironton, OH	Ohio River, Mile 326.7–327.7 (Ohio).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
5. 1 day—A Saturday in July	Paducah Parks and Recreation Department/Cross River Swim.	Paducah, KY	Ohio River, Mile 934.0–936.0 (Kentucky).
6. 1 day—First or second weekend in June.	Bellaire All-American Days	Bellaire, OH	Ohio River, Mile 93.5–94.5 (Ohio).
7. 2 days—Second weekend of June	Rice's Landing Riverfest	Rices Landing, PA	Monongahela River, Mile 68.0–68.8 (Pennsylvania).
8. 1 day—First Sunday in June	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Mile 59.5–60.5 (West Virginia).
9. 1 day—Saturday before 4th of July	Riverfest Inc./Saint Albans Riverfest	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
10. 1 day—4th July	Greenup City	Greenup, KY	Ohio River, Mile 335.2–336.2 (Kentucky).
11. 1 day—4th July	Middleport Community Association	Middleport, OH	Ohio River, Mile 251.5–252.5 (Ohio).
12. 1 day—4th July	People for the Point Party in the Park	South Point, OH	Ohio River, Mile 317–318 (Ohio).
13. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival	Louisville, KY	Ohio River, Mile 618.5–619.5 (Kentucky).
14. 1 day—Third or fourth week in July	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Mile 90.0–90.5 (West Virginia).
15. 1 day—4th or 5th of July	City of Cape Girardeau July 4th Fireworks Show on the River.	Cape Girardeau, MO.	Upper Mississippi River, Mile 50.0–52.0.
16. 1 day—Third or fourth of July	Harrah's Casino/Metropolis Fireworks	Metropolis, IL	Ohio River, Mile 942.0–945.0 (Illinois).
17. 1 day—During the first week of July	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
18. 1 day—July 4th	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
19. 1 day—During the first week of July	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Mile 755.0–759.0 (Kentucky).
20. 1 day—During the first week of July	Riverfront Independence Festival Fireworks.	New Albany, IN	Ohio River, Mile 602.0–603.5 (Indiana).
21. 1 day—July 4th	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
22. 1 day—Saturday before July 4th	Town of Cumberland City/Lighting up the Cumberlands Fireworks.	Cumberland City, TN.	Cumberland River, Mile 103.0–105.0 (Tennessee).
23. 1 day—July 4th	Knoxville office of Special Events/Knoxville July 4th Fireworks.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
24. 1 day—July 4th	NCVC/Music City July 4th	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
25. 1 day—Saturday before July 4th, or Saturday after July 4th.	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Mile 450.0–450.5 (Tennessee).
26. 1 day—Second Saturday in July	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Mile 468.2–469.2 (Kentucky and Ohio).
27. 1 day—Sunday before Labor Day	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 469.2–470.5 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
28. 1 day—July 4th	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Mile 322.1–323.1 (Kentucky).
29. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Mile 265.2–266.2, Kanawha River Mile 0.0–0.5 (West Virginia).
30. 1 day—July 3rd or 4th	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
31. 1 day—July 4th	Civic Forum/Civic Forum 4th of July Celebration.	Portsmouth, OH	Ohio River, Mile 355.5–356.5 (Ohio).
32. 1 day—Second Saturday in August	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Mile 005.5–006.0 (Pennsylvania).
33. 1 day—Second or third week of August.	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
34. 1 day—Second full week of August	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Mile 0.8–1.0 (Pennsylvania).
35. 1 day—Third week of August	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Mile 25.2–25.8 (Pennsylvania).
36. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River Mile, 0.5–1.0 (Pennsylvania).
37. 1 day—Friday before Thanksgiving	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.0 (Pennsylvania).
38. Multiple days—April through November.	Pittsburgh Riverhounds/Riverhounds Fireworks.	Pittsburgh, PA	Monongahela River, Mile 0.22–0.77 (Pennsylvania).
39. 3 days—Second or third weekend in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
40. 1 day—Second or third Saturday in June, the last day of the Riverbend Festival.	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Mile 463.5–464.5 (Tennessee).
41. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 469.6–470.0 (Kentucky and Ohio).
42. 1 day—Last Saturday in June	City of Aurora/Aurora Firecracker Festival.	Aurora, IN	Ohio River Mile, 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
43. 1 day—Second weekend in June	City of St. Albans/St. Albans Town Fair	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
44. 1 day—Last week of June or first week of July.	PUSH Beaver County/Beaver County Boom.	Beaver, PA	Ohio River, Mile 25.2–25.6 (Pennsylvania).
45. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Mile 032.0–033.0 (Pennsylvania).
46. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Mile 12.0–12.5 (Pennsylvania).
47. 1 day—Week of July 4th	Three Rivers Regatta Fireworks/EQT 4th of July Celebration.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
48. 1 day—3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Mile 934.0–936.0; Tennessee River, mile 0.0–1.0 (Kentucky).
49. 1 day—3rd or 4th of July	City of Hickman, KY	Hickman, KY	Lower Mississippi River, Mile 921.0–923.0 (Kentucky).
50. 1 day—During the first week of July	Evansville Freedom Celebration/4th of July Fireworks.	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
51. 1 day—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN	Ohio River, Miles 555.0–560.0 (Indiana).
52. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
53. 2 days—Second weekend in July	Marietta Riverfront Roar/Marietta Riverfront Roar.	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
54. 1 day—1st weekend in July	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Mile 269.5–270.5 (Ohio).
55. 1 day—July 4th	Kindred Communications/Dawg Dazzle	Huntington, WV	Ohio River, Mile 307.8–308.8 (West Virginia).
56. Multiple days—September through January.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1, Allegheny River mile 0.0–0.25 (Pennsylvania).
57. Sunday, Monday, or Thursday from August through February.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Allegheny River mile 0.0–0.25, Ohio River mile 0.0–0.1, Monongahela River mile 0.0–0.1.
58. 3 days—Third week in September	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Mile 90.2–90.7 (West Virginia).
59. 1 day—Second Saturday in September.	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Mile 171.5–172.5 (Ohio).
60. 1 day—Second weekend of October.	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
61. 1 day—Saturday during the first week of October.	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Mile 58–59 (West Virginia).
62. 1 day—Friday before Thanksgiving	Kittanning Light Up Night Firework Display.	Kittanning, PA	Allegheny River, Mile 44.5–45.5 (Pennsylvania).
63. 1 day—First week in October	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.4 (Pennsylvania).
64. 1 day—Friday before Thanksgiving	Duquesne Light/Santa Spectacular	Pittsburgh, PA	Monongahela River, Mile 0.00–0.22, Allegheny River, Mile 0.00–0.25, and Ohio River, Mile 0.0–0.3 (Pennsylvania).
65. 1 day—During the first two weeks of July.	City of Maysville Fireworks	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
66. 1 day—Saturday before Memorial Day.	Venture Outdoors/Venture Outdoors Festival.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25; Monongahela River, Mile 0.0–0.25 (Pennsylvania).
67. 1 day—Third Saturday in July	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Ohio River, Mile 7.0–9.0 (Pennsylvania).

TABLE 1 OF § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Sponsor/name	Sector Ohio Valley location	Safety zone
68. 1 day—July 4th	Wellsburg 4th of July Committee/ Wellsburg 4th of July Freedom Celebration.	Wellsburg, WV	Ohio River, Mile 73.5–74.5 (West Virginia).
69. 1 day—During the first week of July	Newburgh Fireworks Display	Newburgh, IN	Ohio River, Mile 777.3–778.3 (Indiana).
70. 3 days—Third or Fourth weekend in April.	Henderson Tri-Fest/Henderson Breakfast Lions Club.	Henderson, KY	Ohio River, Mile 803.5–804.5 (Kentucky).

Dated: May 25, 2017.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2017–11619 Filed 6–5–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2016–0648; A–1–FRL–9962–83-Region 1]

Air Plan Approval; CT; Approval of Single Source Orders; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a final rule in the **Federal Register** on May 1, 2017, approving reasonably available control technology (RACT) orders for two facilities in Connecticut, and also approving the state's request to withdraw seven previously approved RACT orders from the Connecticut state implementation plan. An error in the amendatory instruction is identified and corrected in this action.

DATES: This rule is effective on June 30, 2017.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046; *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on May 1, 2017 (82 FR 20262) approving two Connecticut state orders, and also approving the state's request to withdraw seven previously approved orders from the Connecticut state implementation plan. In this approval, EPA incorrectly identified in the amendatory instructions a paragraph to be added to 40 CFR 52.370 as paragraph (c)(55)(i)(B). This paragraph should have been identified as (c)(55)(i)(C). Therefore, the amendatory instruction is being corrected to reflect the correct CFR reference.

Correction

In the direct final rule published in the **Federal Register** on May 1, 2017, (82 FR 20262), make the following correction:

§ 52.370 [Corrected]

■ 1. On page 20266, first column, in amendatory instruction 2 for § 52.370, in the fourth line, the entry for paragraph ''(c)(55)(i)(B)'' is corrected to read ''(c)(55)(i)(C).''

Dated: May 16, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–11571 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2017–0202; FRL–9962–41–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, New Hampshire, Rhode Island, and Vermont; Revisions to State Plan for Designated Facilities and Pollutants: New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving: Negative declarations for commercial and industrial solid waste incinerators for the State of Connecticut, the State of New Hampshire, the State of Rhode Island, and the State of Vermont; negative declarations for hospital/medical/infectious waste incinerators for the State of Rhode Island; and revisions to the state plan for existing large and small municipal waste combustors for the State of New Hampshire. This action is being made in accordance with sections 111 and 129 of the Clean Air Act (CAA).

DATES: This direct final rule is effective August 7, 2017, unless EPA receives adverse comments by July 6, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0202 at *https://www.regulations.gov,* or via email to *bird.patrick@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency,

Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA, 02109–0287. Telephone: 617–918–1287. Fax: 617–918–0287. Email *bird.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Commercial and Industrial Solid Waste Incinerators
A. Connecticut
B. New Hampshire
C. Rhode Island
D. Vermont
III. Hospital/Medical/Infectious Waste Incinerators
A. Rhode Island
IV. Large and Small Municipal Waste Combustors
A. New Hampshire
V. Final Actions
VI. Statutory and Executive Order Reviews

I. Background

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. These rulemakings establish emission standards for certain air pollutants, including organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, and particulate matter (which includes opacity).

Section 129(b)(2) requires states to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated emission guidelines. Section 129(b)(3) requires EPA to promulgate a federal plan within two years from the date on which the emission guidelines, or revision to the emission guidelines, is promulgated. The federal plan is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The federal plan remains in effect until the state submits and receives EPA approval of its section 111(d)/129 state plan.

State plans submitted pursuant to CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines. If a state has no existing sources for the relevant emission guideline, a state may submit a negative declaration in lieu of a state plan for that particular type of existing source solid waste incineration unit.

II. Commercial and Industrial Solid Waste Incinerators

Performance standards for new stationary source commercial and industrial solid waste incinerators (CISWI) and emission guidelines for existing source CISWI were originally promulgated on December 1, 2000 (65 FR 75338). These rulemakings underwent a number of revisions and amendments throughout the 2000s, with the most recent amendments being finalized on June 23, 2016 (81 FR 40956). Due to significant changes to applicability in the March 21, 2011 CISWI rulemaking, EPA required states to resubmit state plans for existing source CISWI. *See* 76 FR 15704 and 78 FR 9112. Existing source CISWI units are those which have commenced construction on or before June 4, 2010 or modified no later than August 7, 2013. The emission guidelines for existing source CISWI is codified at 40 CFR part 60, subpart DDDD.

A. Connecticut

Connecticut Department of Energy & Environmental Protection (CT DEEP) submitted a negative declaration on September 1, 2015 certifying no existing source CISWI units operate within the State of Connecticut. CT DEEP noted the energy recovery incinerator located at Pfizer, Inc. in Groton, Connecticut ceased operation in 2008. The unit's permits were revoked, and the incinerator was rendered inoperable.

B. New Hampshire

The New Hampshire Department of Environmental Services (NH DES) submitted a negative declaration on September 25, 2013 certifying no existing source CISWI units operate within the State of New Hampshire. NH DES noted that an existing source CISWI unit located at D.D. Bean & Sons Co. in Jaffrey, New Hampshire ceased operating in January 2005. The unit was completely dismantled in August 2005. NH DES has requested its state plan for existing source CISWI, approved by EPA on February 10, 2003 (68 FR 6635), be withdrawn and the negative declaration be approved in its stead.

C. Rhode Island

The Rhode Island Department of Environmental Management (RI DEM) submitted a negative declaration on August 19, 2015 certifying no existing source CISWI units operate within the State of Rhode Island. This certification serves to update a previous negative declaration for existing source CISWI approved by EPA on April 12, 2002 (67 FR 17946).

D. Vermont

The Vermont Department of Environmental Conservation (VT DEC) submitted a negative declaration on July 26, 2013 certifying no existing source CISWI units operate within the State of Vermont. This certification serves to update a previous negative declaration for existing source CISWI approved by EPA on December 11, 2001 (66 FR 63940).

III. Hospital/Medical/Infectious Waste Incinerators

Performance standards for new stationary source hospital/medical/infectious waste incinerators (HMIWI) and emission guidelines for existing source HMIWI were originally promulgated on September 15, 1997 (62 FR 48348). The rulemakings underwent a number of revisions and amendments throughout the 2000s, with the most recent amendments being finalized on April 4, 2011(76 FR 18407). Existing source HMIWI units are those which have commenced construction on or before December 1, 2008 or modified no later than April 6, 2010. The emission guidelines for existing source HMIWI are codified at 40 CFR part 60, subpart Ce.

A. Rhode Island

RI DEM submitted a negative declaration on February 8, 2011 certifying no existing source HMIWI units operate within the State of Rhode Island. All HMIWI units within the state have permanently ceased operation. On August 19, 2015, RI DEM requested its state plan for existing source HMIWI, approved by EPA on April 27, 2001 (66 FR 21092), be withdrawn and the negative declaration be approved in its stead.

IV. Large and Small Municipal Waste Combustors

Performance standards for new stationary source large municipal waste combustors (MWC) and emission guidelines for existing large MWCs were originally promulgated on February 11, 1991 (54 FR 52251). Large MWC rulemakings underwent a number of revisions and amendments throughout the 1990s and early 2000s, with the most recent amendments being finalized on May 10, 2006 (71 FR 18407). Performance standards for new stationary source small MWCs and emission guidelines for existing small MWCs were originally promulgated on December 6, 2000 (65 FR 76350 and 65 FR 76378). Existing large MWC units are those which have commenced construction on or before September 20, 1994 or modified no later than June 19, 1996. The emission guidelines for existing source large MWCs are codified at 40 CFR part 60, subpart Cb. Existing source small MWC units are those

which have commenced construction on or before August 30, 1999 or modified no later than June 21, 2001. The emission guidelines for existing small MWCs are codified at 40 CFR part 60, subpart AAAA.

A. New Hampshire

EPA approved the New Hampshire large and small MWC state plan on February 10, 2003 (68 FR 6630). The implementing and enforceable regulation for the New Hampshire large and small MWC state plan is CHAPTER Env-A 3300 MUNICIPAL WASTE COMBUSTION. On January 29, 2009, NH DES submitted revisions to its large and small MWC state plan, specifically revisions to Env-A 3300, in order to make New Hampshire's state plan consistent with EPA's 2006 amendments to the large MWC emission guidelines. A technical amendment to the January 2009 submittal was submitted on February 13, 2009. EPA approved New Hampshire's state plan revisions on September 3, 2014 (79 FR 52204).

In early 2016, the New Hampshire General Court revised 125–C:10–a, a state statute that establishes emission limits for large and small MWC units. The revised legislation increased the stringency of emission limits for existing small MWCs for particulate matter, cadmium, lead, and dioxin/furans. The revised emission limits for existing small MWCs are now identical to those of existing large MWCs for those particular pollutants. Revision to 125–C:10–a became effective on July 18, 2016.

In anticipation of the legislative action, NH DES revised Env-A 3300. Revisions to Env-A 3300 incorporated by reference 125–C:10–a and added a table to Env-A 3300 at Appendix D summarizing the most stringent emission limits applicable to existing small MWCs in New Hampshire. Other inconsequential formatting changes were made to Env-A 3300. Overall, the revised emission limits for existing source small MWCs make the New Hampshire regulation more stringent than federal standards for existing small MWCs.

NH DES submitted the amended Env-A 3300 as a state plan revision on July 28, 2016. NH DES provided adequate public notice of public hearings for the proposed rulemaking Env-A 3300.

V. Final Actions

EPA is approving CISWI negative declarations for the State of Connecticut, the State of Rhode Island, and the State of Vermont. EPA is approving the withdrawal of the New Hampshire CISWI state plan and approving the state's negative declaration. EPA is approving the withdrawal of the Rhode Island HMIWI state plan and approving the state's negative declaration. These negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source categories.

EPA is approving revisions to the New Hampshire state plan for large and small MWCs. EPA's approval of the New Hampshire's state plan is based on our findings that:

- NH DES provided adequate public notice of public hearings for the proposed rulemaking that allows New Hampshire to carry out and enforce provisions that are at least as protective as the emission guidelines for large and small MWCs, and;
- NH DES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

EPA is publishing these actions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declarations, State Plan withdrawal, and technical corrections should relevant adverse comments be filed. This rule will be effective August 7, 2017 without further notice unless the Agency receives relevant adverse comments by July 6, 2017.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 2017 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. 40 CFR 62.04. Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this direct final rulemaking is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 August 7, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 20, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

■ Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart H—Connecticut

■ 2. Add § 62.1750 and an undesignated center heading to subpart H to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.1750 Identification of plan—negative declaration.

On September 1, 2015, the State of Connecticut Department of Energy and Environmental Protection submitted a letter certifying no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR 60, subpart DDDD operate within the state's jurisdiction.

Subpart EE—New Hampshire

■ 3. Amend § 62.7325 by:

■ a. Removing and reserving paragraph (b)(3);

■ b. Adding paragraph (b)(4)(ii); and

■ c. Removing and reserving paragraph (c)(3).

The addition reads as follows:

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(4) * * *

(ii) Revised State Plan for Large and Small Municipal Waste Combustors was submitted on July 28, 2016. Revisions included amendments to New Hampshire Code of Administrative Rules Env-A 3300 Municipal Waste Combustion in response to more stringent emission limits for Small MWCs enacted by the New Hampshire General Court in 2016 and codified at New Hampshire Revised Statutes Annotated 125–C:10-a.

* * * * *

■ 4. Revise § 62.7455 to read as follows:

§ 62.7455 Identification of plan—negative declaration.

On September 25, 2013 the State of New Hampshire Department of Environmental Services submitted a letter certifying no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR part 60, subpart DDDD operate within the state's jurisdiction.

Subpart OO—Rhode Island

■ 5. Add an undesignated center heading preceding § 62.9825 to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.9825 [Amended]

■ 6. Section 62.9825 is amended by removing and reserving paragraphs (b)(1) and (c)(1).

■ 7. Revise § 62.9990 to read as follows:

§ 62.9990 Identification of plan—negative declaration.

On September 25, 2013 the State of Rhode Island Department of Environmental Management submitted a letter certifying no Hospital/Medical/Infectious Waste Incinerators units subject to 40 CFR part 60, subpart Ce operate within the state's jurisdiction.

Subpart UU—Vermont

■ 8. Revise § 62.11480 to read as follows:

§ 62.11480 Identification of plan—negative declaration.

On July 26, 2013, the State of Vermont Department of Environmental Conservation submitted a letter certifying no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR part 60, subpart DDDD operate within the state's jurisdiction.

[FR Doc. 2017–10916 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 82, No. 107
Tuesday, June 6, 2017

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2017–0008]

RIN 3150–AJ89

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® Cask System; Certificate of Compliance No. 1031, Amendment No. 7

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International (NAC), MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 7 to Certificate of Compliance (CoC) No. 1031. Amendment No. 7 provides a new Passive MAGNASTOR® Transfer Cask and associated Technical Specification (TS) changes in Appendices A and B, and updates Section 4.3.1(i) in Appendix A of the TSs to include revised seismic requirements. Clarifying (non-technical) changes were also made to Appendices A and B.

DATES: Submit comments by July 6, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0008. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5252; email: *Keith.McDaniel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0008 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0008.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0008 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This proposed rule is limited to the changes contained in Amendment No. 7 to CoC No. 1031 and does not include other aspects of the NAC MAGNASTOR® Cask System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on August 21, 2017. However, if the NRC receives significant adverse comments on this proposed rule by July 6, 2017, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action

in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC MAGNASTOR® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession number
Request to Amend U.S. NRC Certificate of Compliance No. 1031 for NAC International MAGNASTOR Cask System, Letter Dated August 7, 2015.	ML15225A468.
NAC International, Submittal of Responses to NRC's Request for Additional Information to Amend the U.S. NRC CoC No. 1031 Related to the MAGNASTOR® Cask System, Amendment No. 7 Request, Letter Dated April 15, 2016.	ML16112A029 (Package).
Responses to NRC Request for Additional Information No. 2 Related to the MAGNASTOR® Cask System, Amendment No. 7 Request, CoC No. 1031, Letter Dated August 15, 2016.	ML16230A543 (Package).
NAC International Supplement to Submission of Responses to NRC Request for Additional Information No. 2 Related to the MAGNASTOR® Cask System, Amendment No. 7 Request, CoC No. 1031, Letter Dated September 7, 2016.	ML16253A005.
NAC International MAGNASTOR Storage System, Proposed CoC, Certificate of Compliance No. 1031, Amendment No. 7.	ML16295A243.
NAC International MAGNASTOR Storage System, Proposed Tech Specs, Appendix A, Amendment No. 7	ML16295A248.
NAC International MAGNASTOR Storage System, Proposed Tech Specs, Appendix B, Amendment No. 7	ML16295A252.
NAC International MAGNASTOR Storage System, Proposed Preliminary Safety Evaluation Report, Amendment No. 7.	ML16295A258.

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2017–0008. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2017–0008); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Initial Certificate, Revision 1, Effective Date: February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 1, Revision 1, Effective Date: February 1, 2016.

Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 2, Revision 1, Effective Date: February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 3, Revision 1, Effective Date: February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

Amendment Number 7 Effective Date: August 21, 2017.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 24th day of May, 2017.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Executive Director for Operations.

[FR Doc. 2017–11682 Filed 6–5–17; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0529; Directorate Identifier 2016–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive comments on this proposed AD by July 21, 2017.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0529; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0529; Directorate Identifier 2016–NM–123–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0129, dated June 23, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model

FALCON 900EX airplanes. The MCAI states:

The airworthiness limitations and maintenance requirements for the DA [Dassault Aviation] Falcon 900EX type design relating to Falcon 900EX Easy, Falcon 900LX and Falcon 900DX variants are included in Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). These instructions have been identified as mandatory for continued airworthiness.

Failure to accomplish these instructions could result in an unsafe condition.

Consequently, EASA issued AD 2013–0052 [which corresponds to AD 2014–16–27, Amendment 39–17951 (79 FR 51071, August 27, 2014) (''2014–16–27'')] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in DA Falcon 900EX Easy/900LX/900DX AMM chapter 5–40 (DGT 113875) at revision 7.

Since that [EASA] AD was issued, DA issued revision 9 of DA Falcon 900EX Easy/900LX/900DX AMM chapter 5–40 (DGT 113875) (hereafter referred to as ''the ALS'' in this AD), which contains new or more restrictive maintenance requirements and/or airworthiness limitations. The ALS introduces, among others, the following new tasks:

—Task 53–50–00–220–803 ''Detailed inspection of the baggage compartment'';

—Task 53–50–00–220–807 ''Detailed inspection of the upper part of frame 30.''

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0052, which is superseded, and requires accomplishment of the actions specified in the ALS.

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–2017–0529.

Related Service Information Under 1 CFR Part 51

We reviewed Chapter 5–40, Airworthiness Limitations, Revision 9, dated November 2015, of the Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual. The service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations section (ALS) of the AMM. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

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

This proposed AD would not supersede AD 2014–16–27. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations than those required by AD 2014–16–27. Accomplishment of the proposed actions would then terminate all requirements of AD 2014–16–27.

Airworthiness Limitations Based on Type Design

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

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

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

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

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

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

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore applies to Dassault Aviation Model FALCON 900EX airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of approval of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

We estimate that this proposed AD affects 63 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance or inspection program revision ..	1 work-hour × $85 per hour = $85	$0	$85	$5,355

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2017–0529; Directorate Identifier 2016–NM–123–AD.

(a) Comments Due Date

We must receive comments by July 21, 2017.

(b) Affected ADs

This AD affects AD 2014–16–27, Amendment 39–17951 (79 FR 51071, August 27, 2014) (''AD 2014–16–27'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97 and S/N 120 and higher, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before November 1, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

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

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 9, dated November 2015, of the Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 9, dated November 2015, of the Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual, is within the applicable times specified in the maintenance manual or 90 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) No Alternative Actions and Intervals

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

(i) Terminating Action

Accomplishing paragraph (g) of this AD terminates all requirements of AD 2014–16–27.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0129, dated June 23, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0529.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11259 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0492; Directorate Identifier 2016–SW–025–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Honeywell) Enhanced Ground Proximity Warning System (EGPWS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for various normal and transport category rotorcraft with certain Honeywell EGPWS installed. This proposed AD would require updating the software version of the EGPWS. This proposed AD is prompted by a software defect that prevents the EGPWS from providing terrain warnings. The proposed actions are intended to address an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 7, 2017.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0492; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Honeywell International Inc., 15001 NE. 36 Street, Redmond, Washington 98052–5317; telephone (800) 601–3099; internet address *www.myaerospace.com.* 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.

FOR FURTHER INFORMATION CONTACT: Judy Heredia, Aviation Safety Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5335; email *judy.heredia@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Honeywell MK XXI EGPWS part number (P/N) 965–1227–005 and MK XXII EGPWS P/N 965–1595–020, P/N 965–1595–021, 965–1595–022, 965–1595–024, 965–1595–026, 965–1595–028, and 965–1595–030 installed on various normal and transport category helicopters from five manufacturers. This proposed AD would require updating the software of the EGPWS. This proposed AD is prompted by a software defect found by Honeywell in certain MK XXI and MK XXII EGPWSs during testing. The testing revealed the terrain alerting feature will not function as intended in certain specific geographical areas under altitudes of 175-feet mean sea level (MSL). According to Honeywell, the terrain display is not affected by the defect and will correctly present terrain and its corresponding elevation information. However, in some locations, the EGPWS will not issue a warning or caution for terrain, water, or obstacles below 175 feel MSL. Without this feature of the EGPWS, the helicopter could potentially operate into threatening terrain or obstacles without providing any warning to the crew, resulting in loss of the helicopter. Since the defect was discovered, Honeywell has developed a software modification (MOD) that corrects this condition.

Record of Ex Parte Communication

In preparation of AD actions such as notices of proposed rulemaking and immediately adopted final rules, it is the practice of the FAA to obtain technical information and information on the operational and economic impact from design approval holders and aircraft operators. We discussed certain aspects of this proposed AD by email with Honeywell. A copy of each email contact can be found in the rulemaking docket. For information on locating the docket, see ''Examining the AD Docket.''

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed Honeywell Service Bulletin (SB) 965–1227–34–0001, Revision 0, dated May 4, 2015 (SB 965–1227–34–0001); Honeywell SB 965–1595–34–0034, Revision 0, dated February 18, 2015 (SB 965–1595–34–0034); and Honeywell SB 965–1595–34–0035, Revision 0, dated March 25, 2015 (SB 965–1595–34–0035). SB 965–1227–34–0001 specifies procedures for installing and verifying a software MOD to a certain part-numbered MK XXI EGPWS and for replacing the front panel label identifying the software version. SB 965–1595–34–0034 specifies procedures for installing and verifying a software MOD to certain part-numbered MK XXII EGPWS and for replacing the front panel label identifying the software version. SB 965–1595–34–0035 specifies procedures for installing and verifying a software MOD to certain part-numbered MK XXII EGPWS and for replacing the front panel label identifying the software version. This service information also states that terrain database version 437 must be installed prior to updating the EGPWS software.

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 of this NPRM.

Other Related Service Information

We also reviewed Honeywell SB ATA No. 965–1590/1595–34–18, dated July 30, 2004. This service information contains procedures for updating the MK XXII EGPWS with terrain database version 437 and verifying the updated software was successfully installed.

Proposed AD Requirements

By following certain procedures in the manufacturer's service bulletin, this proposed AD would require, within 1,080 hours time-in-service (TIS), installing terrain database version 437 if not already installed; updating, installing, and confirming software MOD 1 or MOD 2 as determined by the model and serial number of the EGPWS; and replacing the software version label on the EGPWS front face.

Differences Between This Proposed AD and the Service Information

The service information requires the software MODs to be accomplished within 60 months, while this proposed AD would require compliance within 1,080 hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 3,000 appliances installed on helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this proposed AD. At an average labor rate of $85 per hour, updating and confirming the software and replacing the software version label would require about 0.5 work-hour, and required parts would cost $2,500, for a total cost of $2,543 per helicopter and $7,629,000 for the U.S. fleet.

According to Honeywell's service information all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Honeywell. 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

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, 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 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 proposed 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.

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):

Honeywell International, Inc. (Honeywell): Docket No. FAA–2017–0492; Directorate Identifier 2016–SW–025–AD.

(a) Applicability

This AD applies to Honeywell MK XXI Enhanced Ground Proximity Warning System (EGPWS) part number (P/N) 965–1227–005 with software modification (MOD) 1 and MK XXII EGPWS P/N 965–1595–020 with MOD 1, P/N 965–1595–021 with MOD 1, 965–1595–022 with MOD 1, 965–1595–024 with MOD 1, 965–1595–026 with MOD 1, 965–1595–028 with MOD 0, and 965–1595–030 with MOD 0. These EGPWSs are installed on, but not limited to, the following helicopters, certificated in any category:

(1) Agusta S.p.A. Model A109 and AW139;

(2) Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS355NP, SA–365N, EC130B4, EC130T2, EC 155B, EC155B1, and EC225LP;

(3) Airbus Helicopters Deutschland GmbH Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3;

(4) Bell Helicopter Textron Inc. Model 212 and 412;

(5) Bell Helicopter Textron Canada Limited Model 407;

(6) Bell Helicopter Textron Model 430;

(7) MD Helicopters, Inc. Model MD900; and

(8) Sikorsky Aircraft Corporation Model S–76B, S–76C, S–76D, and S–92A.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of an EGPWS to generate a terrain warning, which could result in flight into terrain.

(c) Comments Due Date

We must receive comments by August 7, 2017.

(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

Within 1,080 hours time-in-service:

(1) Install terrain database version 437 if not already installed.

(2) For helicopters with an MK XXI EGPWS P/N 965–1227–005:

(i) Update the software by following the Accomplishment Instructions, paragraphs 3.B.(1)(a) through 3.B.(1)(j), of Honeywell Service Bulletin (SB) 965–1227–34–0001, Revision 0, dated May 4, 2015 (SB 965–1227–34–0001).

(ii) Determine whether the software updated by following paragraphs 3.B.(2)(a) through 3.B.(2)(d) of SB 965–1227–34–0001.

(iii) Install a new software version label on the EGPWS by following paragraph 3.D.(1) or 3.D.(2), as appropriate for your model EGPWS, of SB 965–1227–34–0001.

(3) For helicopters with an MK XXII EGPWS P/N 965–1595–020, P/N 965–1595–021, or P/N 965–1595–022:

(i) Update the software by following the Accomplishment Instructions, paragraphs 3.C.(1)(a) through (h), of Honeywell SB 965–1595–34–0035, Revision 0, dated March 25, 2015 (SB 965–1595–34–0035).

(ii) Determine whether the software updated by following paragraphs 3.C.(2)(a) through 3.C.(2)(d)*6* or 3.C.(3)(a) through (g) of SB 965–1595–34–0035.

(iii) Install a new software version label on the EGPWS by following paragraph 3.E.(1) or 3.E.(2), as appropriate for your model EGPWS, of SB 965–1595–34–0035.

(4) For helicopters with an MK XXII EGPWS P/N 965–1595–024, P/N 965–1595–026, P/N 965–1595–028, or P/N 965–1595–030:

(i) Update the software by following the Accomplishment Instructions, paragraphs 3.C.(1)(a) through 3.C.(1)(h), of Honeywell Service Bulletin 965–1595–34–0034, Revision 0, dated February 18, 2015 (SB 965–1595–34–0034).

(ii) Determine whether the software updated by following paragraphs 3.C.(2)(a) through 3.C.(2)(d)*6* or 3.C.(3)(a) through 3.C.(3)(g) of SB 965–1595–34–0034.

(iii) Install a new software version label on the EGPWS by following paragraph 3.E.(1) or 3.E.(2), as appropriate for your model EGPWS, of SB 965–1595–34–0034.

(5) Do not install an EGPWS on any helicopter unless you have complied with the requirements in this AD.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Judy Heredia, Aviation Safety Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5335; email *9-ANM-LAACO-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.

(g) Additional Information

Honeywell SB ATA No. 965–1590/1595–34–18, dated July 30, 2004, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Honeywell International Inc., 15001 NE. 36 Street, Redmond, Washington, 98052–5317; telephone (800) 601–3099; internet address *www.myaerospace.com.* You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3444 Ground Proximity System.

Issued in Fort Worth, Texas, on May 15, 2017.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2017–11174 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0525; Directorate Identifier 2016–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive comments on this proposed AD by July 21, 2017.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0525; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA

98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0525; Directorate Identifier 2016–NM–121–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0127, dated June 23, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. The MCAI states:

> The airworthiness limitations and maintenance requirements for the DA [Dassault Aviation] Mystère-Falcon 900 type design are included in Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Consequently, EASA issued AD 2013–0053 [which corresponds with AD 2016–01–16, Amendment 39–18376 (81 FR 3320, January 21, 2016) (''AD 2016–01–16'')] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in DA Mystère-Falcon 900 AMM chapter 5–40 (DGT 113873) at revision 20.
>
> Since that [EASA] AD was issued, DA issued revision 22 of Mystère-Falcon 900 AMM chapter 5–40 (DGT 113873) (hereafter referred to as ''the ALS'' in this [EASA] AD), which contains new or more restrictive maintenance requirements and/or airworthiness limitations. The ALS introduces, among others, the following new tasks:
>
> —Task 53–40–07–280–803 ''Special detailed inspection of the repaired areas on centre-wing lower panel'';
>
> —Task 53–50–00–220–803 ''Detailed inspection of the baggage compartment'';
>
> —Task 53–50–00–220–807 ''Detailed inspection of the upper part of frame 30.''
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0053, which is superseded, and requires accomplishment of the actions specified in the ALS.

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–2017–0525.

Related Service Information Under 1 CFR Part 51

Dassault issued Chapter 5–40, Airworthiness Limitations, Revision 22, dated December 2015, of the Dassault Aviation Falcon 900 Maintenance Manual. The service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations section (ALS) of the AMM. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

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

This proposed AD would not supersede AD 2016–01–16. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations than those required by AD 2016–01–16. Accomplishment of the proposed actions would then terminate all the requirements of AD 2016–01–16.

Airworthiness Limitations Based on Type Design

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

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

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

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

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

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

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to

help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD. This proposed AD therefore applies Dassault Aviation Model MYSTERE–FALCON 900 airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of approval of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

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

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance or inspection program revision ..	1 work-hour × $85 per hour = $85	$0	$85	$5,525

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2017–0525; Directorate Identifier 2016–NM–121–AD.

(a) Comments Due Date

We must receive comments by July 21, 2017.

(b) Affected ADs

This AD affects AD 2016–01–16, Amendment 39–18376 (81 FR 3320, January 21, 2016) (''AD 2016–01–16'').

(c) Applicability

This AD applies to all Dassault Aviation MYSTERE–FALCON 900 airplanes, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before December 1, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

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

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 22, dated December 2015, of the Dassault Aviation Falcon 900 Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 22, dated December 2015, of the Dassault Aviation Falcon 900 Maintenance Manual, is within the applicable times specified in the maintenance manual, or within 90 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the

procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action

Accomplishing paragraph (g) of this AD terminates all the requirements of AD 2016–01–16.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0127, dated June 23, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0525.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11261 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0527; Directorate Identifier 2017–NM–015–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2016–09–12, which applies to certain The Boeing Company Model 787–8 and 787–9 airplanes. AD 2016–09–12 currently requires repetitive inspections of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, and reinstalling any disengaged panels. Since we issued AD 2016–09–12, a terminating modification has been developed to address the unsafe condition. This proposed AD would retain the actions required by AD 2016–09–12 and require replacing the existing decompression panels with new panels and straps, which would terminate the repetitive inspections. This proposed AD also removes airplanes from the effectivity. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 21, 2017.

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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0527.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0527; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Caspar Wang, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *caspar.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0527; Directorate Identifier 2017–NM–015–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD 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 proposed AD.

Discussion

On April 25, 2016, we issued AD 2016–09–12, Amendment 39–18510 (81 FR 27300, May 6, 2016) (''AD 2016–09–12''), for certain The Boeing Company Model 787–8 and 787–9 airplanes. AD 2016–09–12 requires repetitive inspections of the bilge barriers located

in the forward and aft cargo compartments for disengaged decompression panels, and reinstalling any disengaged panels. AD 2016–09–12 resulted from reports of disengaged decompression panels found on in-service airplanes. We issued AD 2016–09–12 to detect and correct decompression panels that had disengaged from the bilge barriers located in the forward and aft cargo compartments. In the event of a cargo compartment fire, this condition would provide a path for smoke and Halon to enter the flight compartment and passenger cabin, which could result in the inability to contain and extinguish a fire.

Actions Since AD 2016–09–12 Was Issued

The preamble to AD 2016–09–12 specifies that we consider the requirements ''interim action'' and that the airplane manufacturer is currently developing a modification that will address the unsafe condition. That AD explains that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016. The service information describes procedures for replacing the existing decompression panels with new panels and adjustable straps.

We also reviewed Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015. The service information describes procedures for repetitive inspections of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, and reinstalling any disengaged panels.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD also removes airplanes from the applicability of AD 2016–09–12. Airplanes having line numbers 10, 16 through 19, and 499 and subsequent are identified in AD 2016–09–12. However, the unsafe condition was addressed on those airplanes in production; therefore they are not affected by the identified unsafe condition.

Costs of Compliance

We estimate that this proposed AD affects 50 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspections	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle.	$12,750 per inspection cycle.
New proposed modification	7 work-hours × $85 per hour = $595	11,748	12,343	617,150

We estimate the following costs to do any necessary reinstallation that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reinstallation	1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

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

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

Regulatory Findings

We have 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 that the 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 removing Airworthiness Directive (AD) 2016–09–12, Amendment 39–18510 (81 FR 27300, May 6, 2016), and adding the following new AD:

The Boeing Company: Docket No. FAA–2017–0527; Directorate Identifier 2017–NM–015–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by July 21, 2017.

(b) Affected ADs

This AD replaces AD 2016–09–12, Amendment 39–18510 (81 FR 27300, May 6, 2016) (''AD 2016–09–12'').

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by several reports of disengaged decompression panels found on in-service airplanes. We are issuing this AD to prevent decompression panels from disengaging from the bilge barriers located in the forward and aft cargo compartments. In the event of a cargo compartment fire, this condition would provide a path for smoke and Halon to enter the flight compartment and passenger cabin, which could result in the inability to contain and extinguish a fire.

(f) Compliance

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

(g) Retained Repetitive Inspections With Added Reference to Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2016–09–12, with an added reference to terminating action: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a general visual inspection of the bilge barriers located in the forward and aft cargo compartments for disengaged decompression panels, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015. Repeat the inspection thereafter at the applicable times specified in paragraph 5. ''Compliance,'' of Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015; until the terminating modification required by paragraph (i) of this AD is done.

(1) For Group 1 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015: Inspect within 30 days after May 23, 2016 (the effective date of AD 2016–09–12).

(2) For Group 2 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015: Inspect within 180 flight cycles or within 90 days after May 23, 2016 (the effective date of AD 2016–09–12), whichever occurs later.

(h) Retained Reinstallation of Decompression Panels With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2016–09–12, with no changes: If any disengaged decompression panel is found during any inspection required by paragraph (g) of this AD; before further flight, reinstall the panel, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500009–00, Issue 001, dated November 16, 2015.

(i) New Terminating Modification

Within 22 months after the effective date of this AD: Replace the existing decompression panels of the bilge barriers located in the forward and aft cargo compartments with new decompression panels and adjustable straps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016; except as provided by paragraph (j) of this AD. Accomplishing this modification terminates the repetitive inspections required by paragraph (g) of this AD.

(j) Exceptions to Service Information

(1) Where Step 3 of Task 10 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016, identifies part number (P/N) C412705–577, the correct part number is P/N C412705–575.

(2) Where Step 4 of Task 10 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB500008–00, Issue 001, dated December 7, 2016, identifies P/N C412705–575, the correct part number is P/N C412705–577.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2016–09–12, are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (k)(5)(ii) of this AD apply.

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

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

(l) Related Information

(1) For more information about this AD, contact Caspar Wang, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *caspar.wang@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11258 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0524; Directorate Identifier 2016–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive comments on this proposed AD by July 21, 2017.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0524; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0524; Directorate Identifier 2016–NM–122–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0128, dated June 23, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX airplanes. The MCAI states:

> The airworthiness limitations and maintenance requirements for the DA [Dassault Aviation] Falcon 900EX type design are included in Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Consequently, EASA issued AD 2013–0051 [which corresponds to AD 2014–16–26, Amendment 39–17950 (79 FR 51077, August 27, 2014) (''2014–16–26'')] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in DA Falcon 900EX AMM chapter 5–40 (DGT 113874) at revision 12.
>
> Since that [EASA] AD was issued, DA issued revision 14 of Falcon 900EX AMM chapter 5–40 (DGT 113874) (hereafter referred to as ''the ALS'' in this AD), which contains new or more restrictive maintenance requirements and/or airworthiness limitations. The ALS introduces, among others, the following new tasks:
>
> —Task 53–50–00–220–803 ''Detailed inspection of the baggage compartment'';
>
> —Task 53–50–00–220–807 ''Detailed inspection of the upper part of frame 30.''
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0051, which is superseded, and requires accomplishment of the actions specified in the ALS.

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–2017–0524.

Related Service Information Under 1 CFR Part 51

Dassault issued Chapter 5–40, Airworthiness Limitations, Revision 14, dated November 2015, of the Falcon 900EX Maintenance Manual. The service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations section of the AMM. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

develop on other products of the same type design.

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

This proposed AD would not supersede AD 2014–16–26. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations than those required by AD 2014–16–26. Accomplishment of the proposed actions would then terminate all requirements of AD 2014–16–26.

Costs of Compliance

We estimate that this proposed AD affects 70 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance or inspection program revision	1 work-hour × $85 per hour = $85	$0	$85	$5,950

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2017–0524; Directorate Identifier 2016–NM–122–AD.

(a) Comments Due Date

We must receive comments by July 21, 2017.

(b) Affected ADs

This AD affects AD 2014–16–26, Amendment 39–17950 (79 FR 51077, August 27, 2014) (''AD 2014–16–26'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, certificated in any category, serial numbers 1 through 96 inclusive, and serial numbers 98 through 119 inclusive, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

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

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 14, dated November 2015, of the Falcon 900EX Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 14, dated November 2015, of the Falcon 900EX Maintenance Manual, is within the applicable times specified in the maintenance manual, or 90 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) No Alternative Actions and Intervals

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

(i) Terminating Action

Accomplishing paragraph (g) of this AD terminates all requirements of AD 2014–16–26.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0128, dated June 23, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0524.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 23, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–11260 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0277; Airspace Docket No. 17–ASO–9]

Proposed Establishment of Class E Airspace; Columbia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Marion General Hospital Heliport, Columbia, MS, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving Marion General Hospital Heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport.

DATES: Comments must be received on or before July 21, 2017.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm. W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or (202)–366–9826.You must identify the Docket No. FAA–2017–0277; Airspace Docket No. 17–ASO–9, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Marion General Hospital Heliport, Columbia, MS, to support IFR operations in standard instrument approach procedures at the airport.

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2017–0277 and Airspace Docket No. 17–ASO–9) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and

phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0277; Airspace Docket No. 17–ASO–9.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion General Hospital Heliport, Columbia, MS, providing the controlled airspace required to support the new Copter RNAV (GPS) standard instrument approach procedures for IFR operation at Marion General Hospital Heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO MS E5 Marion General, Columbia, MS [New]

Marion General Hospital Heliport, MS
(Lat. 31°15′17″ N., long. 89°48′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion General Hospital Heliport.

Issued in College Park, Georgia, on May 19, 2017.

Ryan W. Almasy,

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

[FR Doc. 2017–11378 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0289; Airspace Docket No. 17–AEA–4]

Proposed Amendment of Class E Airspace, Wellsboro, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Wellsboro, PA, as the airspace surrounding Wellsboro Johnston Airport was inadvertently removed. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 21, 2017.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: 1 (800) 647–5527, or 202–366–9826. You must identify the Docket No. FAA–2017–0289; Airspace Docket No. 17–AEA–4, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments

received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace in the Wellsboro, PA area.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0289; Airspace Docket No. 17–AEA–4.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 to amend Class E airspace extending upward from 700 feet or more above the surface within a 8.2-mile radius of Wellsboro Johnston Airport, Wellsboro, PA, as this airspace was inadvertently removed, and for continued safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Wellsboro, PA [Amended]

Nessmuk Helipad Point in Space Coordinates
(Lat. 41°44′11″ N., long. 77°18′11″ W.)
Wellsboro Johnston Airport, PA
(Lat. 41°43′41″ N., long. 77°23′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of a Point in Space for the SIAP serving the Nessmuk Helipad, and within an 8.2-mile radius of Wellsboro Johnston Airport.

Issued in College Park, Georgia, on May 19, 2017.

Ryan W. Almasy,

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

[FR Doc. 2017–11392 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0320; Airspace Docket No. 17–ASO–12]

Proposed Establishment of Class E Airspace; Picayune, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Highland Community Hospital Heliport, Picayune, MS, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving Highland Community Hospital Heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport.

DATES: Comments must be received on or before July 21, 2017.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–366–9826. You must identify the Docket No. FAA–2017–0320; Airspace Docket No. 17–ASO–12, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Highland Community Hospital Heliport, Picayune, MS, to support IFR operations in standard instrument approach procedures at the heliport.

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2017–0320 and Airspace Docket No. 17–ASO–12) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0320; Airspace Docket No. 17–ASO–12.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the

ADDRESSES section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Highland Community Hospital Heliport, Picayune, MS, providing the controlled airspace required to support the new Copter RNAV (GPS) standard instrument approach procedures for Highland Community Hospital Heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO MS E5 Highland Community, Picayune, MS [New]

Highland Community Hospital Heliport, MS (Lat. 30°32′57″ N., long. 89°39′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Highland Community Hospital Heliport.

Issued in College Park, Georgia, on May 19, 2017.

Ryan W. Almasy,

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

[FR Doc. 2017–11382 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2017–0216; FRL–9963–42–Region 8]

Attainment Date Extensions for the Logan, Utah-Idaho 24-Hour Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant two, one-year extensions to the Moderate attainment date for the 2006 24-hour fine particulate matter ($PM_{2.5}$) Logan, Utah (UT)-Idaho (ID) nonattainment area. This action is based on the EPA's evaluation of air quality monitoring data and extension requests submitted by the State of Utah on May 2, 2017, and the State of Idaho on December 15, 2015, February 26, 2016, and April 25, 2017. The EPA is proposing to grant a one-year extension of the Moderate attainment date from December 31, 2015 to December 31, 2016, and is proposing to grant a second one-year extension of the Moderate attainment date from December 31, 2016 to December 31, 2017, in accordance with section 188(d) of the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2017–0216 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

a. *Submitting CBI.* Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the 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.

b. *Tips for Preparing Your Comments.* When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Designation and Classification of $PM_{2.5}$ Nonattainment Areas

On October 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS), lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter (μg/m³) to 35 μg/m³. On November 13, 2009 (74 FR 58688), the EPA designated a number of areas as nonattainment for the 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³, including the Logan, UT-ID nonattainment area. The EPA originally designated these areas under the general provisions of CAA title I, part D, subpart 1 (''subpart 1''), under which attainment plans must provide for the attainment of a specific NAAQS (in this case, the 2006 $PM_{2.5}$ standards) as expeditiously as practicable, but no later than five years from the date the areas were designated nonattainment.

Following this designation of nonattainment for $PM_{2.5}$ and consistent with EPA guidance, the State of Utah and the State of Idaho developed $PM_{2.5}$ attainment plans intended to meet the general requirements of subpart 1. Utah and Idaho each submitted a $PM_{2.5}$ state implementation plan (SIP) for the Logan, UT-ID nonattainment area on December 14, 2012. On May 9, 2013, Utah submitted a SIP that contained multiple area source rules intended to reduce emissions in the $PM_{2.5}$ nonattainment areas.

Subsequently, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit held that the EPA should have implemented the 2006 24-hour $PM_{2.5}$ standard based on both the general nonattainment area requirements in subpart 1 and the PM-specific requirements of CAA title I, part D, subpart 4 (''subpart 4''). Under subpart 4, PM nonattainment areas are initially classified as Moderate, and Moderate area attainment plans must address the requirements of subpart 4 as well as subpart 1. Additionally, CAA subpart 4 establishes a different SIP submittal due date and attainment year. For a Moderate $PM_{2.5}$ nonattainment area, the attainment SIP is due no later than 18 months after designation and the attainment year is as expeditiously as practicable after designation but no later than the end of the sixth calendar year after designation. On June 2, 2014 (79 FR 31566), the EPA finalized the Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate ($PM_{2.5}$) NAAQS and 2006 $PM_{2.5}$ NAAQS (''the Classification and Deadlines Rule''). This rule classified the areas that were designated in 2009 as nonattainment to Moderate, and set the attainment SIP submittal due date for those areas at December 31, 2014. This rule did not affect the Moderate area attainment date of December 31, 2015.

After the court's decision, on December 16, 2014, the Utah Department of Air Quality (UDAQ) withdrew all prior Logan, UT-ID $PM_{2.5}$ SIP submissions and submitted a new SIP to address both the general requirements of subpart 1 and the PM-specific requirements of subpart 4 for Moderate areas. Additionally, on December 24, 2014, the Idaho Department of Environmental Quality (IDEQ) submitted a supplement to the 2012 SIP submission (''2014 amendment'') that included additional analyses intended to meet CAA subpart 4 requirements.

On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (''$PM_{2.5}$ Implementation Rule''), 81 FR 58010, which addressed the January 4, 2013 court ruling. The final implementation rule provides the EPA's interpretation of the requirements applicable to $PM_{2.5}$ nonattainment areas and explains how air agencies can meet the statutory SIP requirements that apply under subparts 1 and 4 to areas designated nonattainment for any $PM_{2.5}$ NAAQS, such as: General requirements for attainment plan due dates and attainment demonstrations; provisions for demonstrating reasonable further progress; quantitative milestones; contingency measures; nonattainment new source review (NNSR) permitting programs; and reasonably available control measures (RACM) (including reasonably available control technology (RACT). The statutory attainment planning requirements established in subparts 1 and 4 are designed to ensure that states implement measures that provide for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable by requiring states to adopt feasible emissions reduction strategies for $PM_{2.5}$ and its precursors to achieve incremental reductions leading to attainment of the $PM_{2.5}$ NAAQS in nonattainment areas.

B. CAA Requirements for an Attainment Date Extension

Under CAA section 188(d), the EPA may grant a state's request to extend the attainment date for a Moderate area if: ''(1) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) no more than one exceedance of the 24-hour [NAAQS] level for PM_{10} has occurred in the area in the year preceding the Extension Year, and the annual mean concentration for PM_{10} in the area for such year is less than or equal to the standard level.'' The EPA cannot issue

more than two, one-year extensions for a single Moderate area.

The $PM_{2.5}$ Implementation Rule interprets section 188(d) for $PM_{2.5}$ Moderate areas. Under the regulations, the EPA may grant an extension if the agency determines that: (1) The state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) for an area designated nonattainment for the 24-hour $PM_{2.5}$ NAAQS for which the state seeks an attainment date extension, the 98th percentile 24-hour concentration at each monitor in that area for the calendar year that includes the applicable attainment date is less than or equal to the level of the applicable 24-hour standard (calculated according to the data analysis requirements in 40 CFR part 50, appendix N). 40 CFR 51.1005(a)(1). The applicable implementation plan is defined as the plan submitted to meet Moderate area requirements. *Id.* § 51.1005(a)(2). The $PM_{2.5}$ Implementation Rule explains that, to meet the first criterion, a state needs to show that it has ''submitted the necessary attainment plan for the area for the applicable $PM_{2.5}$ NAAQS and is implementing the control measures in the submission.'' 81 FR 58070/3.

In the absence of an attainment date extension, upon a determination of failure to attain by the EPA, the area would be reclassified to Serious by operation of law under CAA section 188(b)(2). If an extension to the attainment date is granted, the EPA must determine whether the area attained the $PM_{2.5}$ NAAQS at the end of the extension year. If the requisite three consecutive years of air quality data needed to determine attainment are still not available after the first extension, the state may apply for a second one-year extension of the attainment date if the requirements listed above for the first extension remain satisfied. The EPA will also consider the state's $PM_{2.5}$ planning progress for the area in the year for which the first extension is granted, and if the area does not have the requisite three consecutive years of air quality data needed to demonstrate attainment at the end of the second extension, no further extensions of the attainment date can be granted. Once a final determination of failure to attain is made by the EPA and published in the **Federal Register**, the area will be reclassified as Serious by operation of law. *See* CAA section 188(b)(2).

As a Moderate $PM_{2.5}$ nonattainment area, the Logan, UT-ID nonattainment area was required by CAA section 188 to attain the 24-hour $PM_{2.5}$ NAAQS by December 31, 2015. On December 15, 2015, and February 26, 2016, the State of Idaho requested that the EPA use the discretion allowed under CAA section 188(d) to grant a one-year extension to the Moderate area attainment date for Logan, UT-ID, from December 31, 2015 to December 31, 2016. In a proposed action published December 16, 2016,[1] the EPA denied Idaho's request because at the time the nonattainment area did not meet the air quality criterion under CAA section 188(d). Specifically, the Logan, Utah Federal Reference Method (FRM) monitor used for determining compliance with the $PM_{2.5}$ NAAQS did not have complete and valid 2015 data in accordance with EPA regulations (81 FR 91088). As a result, the EPA could not determine that the data for the Logan monitor met the 98th percentile requirement set forth in 40 CFR 51.1005(a)(1).

Following this proposed action, and as a result of subsequent events described below, the State of Idaho submitted a letter on April 25, 2017, requesting a second one-year Moderate area attainment date extension, from December 31, 2016 to December 31, 2017. On May 2, 2017, the State of Utah requested two, one-year extensions of the attainment date for the Logan, UT-ID nonattainment area, from December 31, 2015 to December 31, 2016, and then December 31, 2016 to December 31, 2017. Each of the extension requests from Idaho and Utah can be found in the Region 8 and Region 10 dockets for the Logan, UT-ID nonattainment area proposed extension request actions, EPA–R08–OAR–2017–0216 and EPA–R10–OAR–2017–0193.

III. Basis for EPA's Proposed Action

A. Compliance With the Applicable SIP

The $PM_{2.5}$ Implementation Rule interprets the extension provisions found in CAA section 188(d)(1). *See* 40 CFR 51.1005(a)(1). Under the rule, a state must show that it submitted a SIP to meet the requirements as listed in 40 CFR 51.1003(a), including the necessary control measures, and that RACM/RACT and additional reasonable measures for sources in the area have been implemented. To qualify for an extension, the state must have adopted the SIP revision through the established state process, submitted the plan to the EPA, and begun implementing the plan; but the state plan would not need to have been approved by the EPA in order for the state to qualify for an extension.

On December 4, 2012, UDAQ submitted a SIP for the Utah portion of the Logan, UT-ID $PM_{2.5}$ nonattainment area, and was prepared to satisfy the requirements of CAA subpart 1, as interpreted by the EPA's Clean Air Fine Particle Implementation Rule (72 FR 20586, April 25, 2007). After the January 4, 2013, D.C. Circuit ruling and subsequent EPA Classification and Deadlines Rule, the State of Utah withdrew the original SIP submittal and submitted an updated SIP to cover CAA subpart 1 and subpart 4 on December 22, 2014. This SIP includes: (1) A modeled attainment demonstration (chapter 5 of the SIP and chapter 4 of the technical support document (TSD)); (2) an emissions inventory (chapter 4 of the SIP and chapter 3 of the TSD); (3) RACM for area and on-road mobile sources (chapter 6 of the SIP and chapter 5 of the TSD); (4) a RACT review (chapter 6 of the SIP and chapter 5 of the TSD); (5) reasonable further progress for direct $PM_{2.5}$, nitrogen oxides (NO_X), sulfur dioxide (SO_2), and volatile organic compounds (VOC) (chapter 8 of the SIP); (6) a demonstration that ammonia is not a significant precursor to $PM_{2.5}$ in the area (chapter 4 of the TSD); (7) motor vehicle emission budgets (chapter 7 of the SIP); (8) quantitative milestones (chapter 8 of the SIP); and (9) contingency measures (chapter 9 of the SIP). The EPA intends to take action on the December 22, 2014 SIP in the near future. The Utah SIP and supporting materials, including the TSD, can be found in the docket for this action. The Idaho SIP and supporting materials can be found in Region 10's docket, EPA–R10–OAR–2015–0067. Additionally, the supporting documentation for ID's two one-year extension requests can be found in Region 10's docket, EPA–R10–OAR–2017–0193.

EPA has reviewed Utah's existing SIP and the December 22, 2014, SIP submission and determined that the state is implementing the requirements and commitments in the submitted SIP. Based on this, the EPA proposes to determine that the state meets the criterion found in 40 CFR 51.1005(a)(1)(i). The control measures that Utah submitted for the Logan UT-ID NAA consist of a vehicle inspection and maintenance (I/M) program and area source rules. The EPA approved the vehicle I/M program on September 9, 2015 (80 FR 54237). The program was initiated on January 1, 2014, and requires a biennial test for vehicles greater than six years old that are of model year 1969 and newer. Half of

[1] Determinations of Attainment by the Attainment Date, Determinations of Failure to Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards, 81 FR 91088 (Dec. 16, 2016).

these vehicles were tested for the first time in 2014 and the rest were tested in 2015; prior to the attainment date for the area. The EPA has also approved or conditionally approved the area source rules submitted by the State. 81 FR 9343; 81 FR 71988. Some of the area source rules were implemented as early as January 1, 2013, but most carried an implementation date of December 1, 2014. All of them were effective and fully enforceable by January 1, 2015.

Similarly, the EPA approved Idaho's woodstove curtailment ordinances, burn ban, heating device restrictions, and woodstove change-out programs as meeting the RACM/RACT requirements in this area (82 FR 729, January 4, 2017). The woodstove curtailment ordinances, burn ban, and heating device restrictions were adopted and fully implemented in the summer and fall of 2012 in preparation for Idaho's December 14, 2012 attainment plan SIP revision. The residential woodstove change-out program was conducted in 2011 to 2012, with a subsequent round of change-outs in 2013 to 2014. A full description of the control measures is included in our December 26, 2013 proposed approval (78 FR 78315) and March 25, 2014 final approval (79 FR 16201). On April 25, 2017, Idaho committed to supplementing the 2012 attainment plan SIP revision, and Idaho's December 24, 2014 amendment to the attainment plan SIP revision, to comply with the revised regulatory requirements of the 2016 $PM_{2.5}$ Implementation Rule for reasonable further progress, quantitative milestones, and motor vehicle emissions budgets. The EPA's proposed conditional approval of these SIP elements is addressed under docket number EPA–R10–OAR–2015–0067.

The EPA proposes that the criterion found in 40 CFR 51.1005(a)(1)(i) has been met. Utah and Idaho submitted SIPs for the Logan, UT-ID Moderate $PM_{2.5}$ nonattainment area that address the CAA requirements for Moderate areas and the states have implemented the permanent and enforceable control measures identified above and the other requirements of the SIPs.

B. Air Quality Data

In accordance with 40 CFR part 58, UDAQ and IDEQ both operate $PM_{2.5}$ monitors in the Logan, UT-ID $PM_{2.5}$ nonattainment area. The IDEQ monitoring site for 2015 and 2016 was located in Franklin, Idaho. In 2015, UDAQ operated two $PM_{2.5}$ monitoring sites, at Logan and Smithfield, and in 2016, UDAQ operated only the Smithfield monitoring site. In the past, the monitor with the highest air quality design value in the nonattainment area has been located in Utah.

As explained in the May 8, 2017 memorandum in the docket, a large number of samples from the filter-based FRM monitor at Logan were invalid. After review of the $PM_{2.5}$ data for 2015, UDAQ removed the invalid samples for its filter based FRM monitor and left the valid samples in the Air Quality System (AQS) database. Additionally, some continuous sampler data from a co-located Federal Equivalent Methods (FEM) monitor were determined to have sufficient quality assurance to meet NAAQS comparison requirements. The Logan site had one FEM monitor co-located at the site, and data from this monitor were used to fill in some of the missing days in 2015, adding to the total number of samples that can be used to determine a 98th percentile value for that year and to provide for a complete 2015 monitoring year. Utah used the methodology found in 40 CFR part 50, appendix N 3.0(d)(2) and 40 CFR part 50, appendix N 3.0(e) to substitute FEM data for the days without FRM data.

The EPA has reviewed this site and, using the criteria found in 40 CFR part 58, appendix A, has determined that the quality assurance (QA) for the continuous FEM monitor is acceptable such that data from the FEM monitor can be substituted for the days for which the FRM monitor data was invalid. Additional information related to these monitors can be found in the November 23, 2016 memoranda found in the docket for this proposed action.

On March 14, 2017, the EPA approved Utah's 2016 Annual Monitoring Network Plan (AMNP). As part of the approval, the EPA approved the closing of the Logan monitoring station (AQS ID# 49–005–0004) and the opening of the Smithfield monitoring station (AQS ID# 49–005–0007). The Logan and Smithfield monitoring stations both ran in 2015; however, the Smithfield monitoring site data was incomplete for 2015 because the station, including the co-located continuous monitor, was not operating in January of that year. The Logan monitoring site shut down on December 31, 2015, and Smithfield became the only operating monitor in the Utah portion of the Logan, UT-ID $PM_{2.5}$ nonattainment area. Additionally, on April 20, 2017, UDAQ submitted a letter that contained the AMP 600 and AMP 450NC reports required to certify the 2016 air quality data in Utah. UDAQ completed the data certification process in AQS and with the April 20, 2017 letter, certifies that the 2016 air quality data is accurate.

The EPA is using data from calendar year 2015 to determine whether the Logan, UT-ID $PM_{2.5}$ nonattainment area met the air quality criteria for granting a one-year extension of the attainment date, from December 31, 2015 to December 31, 2016, under CAA section 188(d). Additionally, the EPA is using calendar year 2016 data to determine whether the Logan, UT-ID $PM_{2.5}$ nonattainment area met the air quality criteria for granting an extension of the attainment date from December 31, 2016 to December 31, 2017.

In 2015, the 98th percentile for the Logan, UT-ID $PM_{2.5}$ nonattainment area at the Logan (Utah) and Franklin (Idaho) monitoring sites were 29.0 $\mu g/m^3$ and 18.8 $\mu g/m^3$, respectively, which are both below the 35 $\mu g/m^3$ standard. Thus, the area met the requirement to qualify for a one-year attainment date extension under CAA section 188(d)(2). *See* 40 CFR 51.1005(a)(1)(ii). In 2016, the 98th percentile for the Logan, UT-ID $PM_{2.5}$ nonattainment area at the Smithfield (Utah) and Franklin (Idaho) monitoring sites were 34.4 $\mu g/m^3$ and 33.3 $\mu g/m^3$, respectively, which are both below the 35 $\mu g/m^3$ standard. Thus, the area met the requirements to qualify for a second one-year attainment date extension under CAA section 188(d)(2). Based on the information above, the criterion in 40 CFR 51.1005(a)(1)(ii) has been met for both one-year extensions.

IV. EPA's Proposed Action

In response to requests from the Governor of Utah on May 2, 2017, and from the IDEQ on December 15, 2015, February 26, 2016, and April 25, 2017, the EPA is proposing to grant two, one-year attainment date extensions to the Moderate attainment date for the 2006 24-hour $PM_{2.5}$ NAAQS for the Logan, UT-ID nonattainment area. If finalized, this action would extend the Moderate area attainment date for the Logan, UT-ID nonattainment area from December 31, 2015 to December 31, 2016, and from December 31, 2016 to December 31, 2017. The proposed action to extend the Moderate attainment date for this nonattainment area is based on both states' compliance with the requirements for the applicable SIPs for the area and on the 2015 and 2016 $PM_{2.5}$ 98th percentile data from the Logan (Utah), Smithfield (Utah), and Franklin (Idaho) monitoring sites in the Logan, UT-ID nonattainment area. If we finalize this proposal, consistent with CAA section 188(d) and 40 CFR 51.1005(a)(1), the nonattainment area will remain a Moderate $PM_{2.5}$ nonattainment area, with a Moderate area attainment date of December 31, 2017. Additionally, the states will not have to submit the additional planning requirements that apply to Serious $PM_{2.5}$ nonattainment

areas unless the area fails to attain the standard by the extended Moderate area attainment date and the area is reclassified to a Serious $PM_{2.5}$ nonattainment area. Consistent with CAA section 188(b)(2), the EPA will determine whether the area attained the standard within six months following the applicable attainment date.

This action is not a redesignation to attainment under CAA section 107(d)(3)(E). Utah and Idaho are not currently attaining the NAAQS and have not submitted maintenance plans as required under section 175(A) of the CAA or met the other statutory requirements for redesignation to attainment. The designation status in 40 CFR part 81 will remain a Moderate nonattainment area until such time as Utah and Idaho meet the CAA requirements for redesignation to attainment or the area is reclassified to Serious.

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and therefore is not subject to review by the Office of Management and Budget (OMB). This proposed action merely approves a state request as meeting federal requirements and imposes no new requirements.

B. Paperwork Reduction Act (PRA)

This action does not impose any additional information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* This action merely approves a state request for an attainment date extension, and this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law. Approval of a state's request for an attainment date extension does not create any new requirements and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Pursuant to the CAA, this action merely approves a state request for an attainment date extension.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. No tribal areas are located in the nonattainment area that will be receiving an attainment date extension. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe any environmental health or safety risks addressed by this action present a disproportionate risk to children. This action merely approves a state request for an attainment date extension and it does not impose additional requirements beyond those imposed by state law.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. This action merely approves a state request for an attainment date extension.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action approves a state request for an attainment date extension based on the state's compliance with requirements and commitments in its plan and recent air quality monitoring data that meets requirements for an extension.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 25, 2017.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11686 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0259; FRL–9963–32–Region 9]

Approval of California Air Plan Revisions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_X) from facilities that emit four or more tons per year of NO_X or oxides of sulfur (SO_X). We are proposing to approve local rules to regulate these emission

sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0259 at *https://www.regulations.gov,* or via email to Andrew Steckel, Rulemaking Office Chief at *Steckel.Andrew@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *Law.Nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SCAQMD	2001	Applicability	12/04/15	03/17/17
SCAQMD	2002	Allocations for NO_X and SO_X	10/07/16	03/17/17
SCAQMD	2005	New Source Review for Regional Clean Air Incentives Market	12/04/15	03/17/17
SCAQMD	2011: Attachment C	Requirements for Monitoring, Reporting, and Recordkeeping for SO_X Emissions: Quality Assurance and Quality Control Procedures.	12/04/15	03/17/17
SCAQMD	2011: Chapter 3	Requirements for Monitoring, Reporting, and Recordkeeping for SO_X Emissions: Process Units—Periodic Reporting and Rule 219 Equipment.	12/04/15	03/17/17
SCAQMD	2012: Attachment C	Requirements for Monitoring, Reporting, and Recordkeeping for NO_X Emissions: Quality Assurance and Quality Control Procedures.	12/04/15	03/17/17
SCAQMD	2012: Chapter 4	Requirements for Monitoring, Reporting, and Recordkeeping for NO_X Emissions: Process Units—Periodic Reporting and Rule 219 Equipment.	12/04/15	03/17/17
SCAQMD	2011: Attachment E	Requirements for Monitoring, Reporting, and Recordkeeping for SO_X Emissions: Definitions.	02/05/16	03/17/17
SCAQMD	2012: Attachment F	Requirements for Monitoring, Reporting, and Recordkeeping for NO_X Emissions: Definitions.	02/05/16	03/17/17

On April 17, 2017, the EPA determined that the submittal for SCAQMD Rule 2001; SCAQMD Rule 2002; SCAQMD Rule 2005; SCAQMD Rule 2011, Attachment C; SCAQMD Rule 2011, Chapter 3; SCAQMD Rule 2012, Attachment C; SCAQMD Rule 2012, Chapter 4; SCAQMD Rule 2011, Attachment E; and SCAQMD Rule 2012, Attachment F met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved earlier versions of Rule 2001; Rule 2011, Attachment C; Rule 2011, Chapter 3; Rule 2012, Attachment C; Rule 2012, Chapter 4; Rule 2011, Attachment E; and Rule 2012, Attachment F into the SIP on August 29, 2006 (71 FR 51120). The SCAQMD adopted revisions to the SIP-approved versions of these rules on May 6, 2005 and CARB submitted them to us on October 20, 2005. We approved earlier versions of Rule 2002 and Rule 2005 into the SIP on August 12, 2011 (76 FR 50128) and on December 20, 2011 (76 FR 78829). The SCAQMD adopted revisions to the SIP-approved versions of these rules on November 5, 2010 and June 3, 2011 and CARB submitted them to us on April 5, 2011 and September 27, 2011. We are acting on only the most recently submitted versions of these rules but have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule revisions?

NO_x contributes to the formation of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10}), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

Section 110(a) of the CAA requires states to submit regulations that control NO_x and PM emissions. SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program consists of SCAQMD Rules 2000 through 2020. The RECLAIM amendments adopted in 2015 and 2016 were revisions to Rules 2001; 2002; 2005; 2011, Attachment C; 2011, Chapter 3; 2012, Attachment C; 2012, Chapter 4; 2011, Attachment E; and 2012, Attachment F. The primary purposes of these amendments to RECLAIM were to lower the NO_x emission cap in the RECLAIM program to achieve additional emission reductions, to allow electric generating facilities (EGFs) to exit RECLAIM, to add provisions regarding facility shutdowns, to create a Regional New Source Review (NSR) Holding Account for existing electricity generating facilities constructed after 1993, and to implement other administrative and clarifying changes. The EPA's technical support document (TSD) has more information about these rules.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the rules?

Generally, SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). Because the submittal contains SIP rules that are part of an economic incentive program (EIP) and that address certain requirements of the nonattainment NSR program, we also evaluated the rule revisions in accordance with the EPA's requirements and recommendations for EIPs and NSR programs.

Additionally, SIP rules must require Reasonably Available Control Technology (RACT) for each major source of NO_x in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The SCAQMD regulates an ozone nonattainment area classified as extreme for the 1997 8-hour ozone and 2008 8-hour ozone standards (40 CFR 81.305). Because the RECLAIM program applies to major sources of NO_x emissions, these rules must implement RACT. SIP rules must also implement Reasonably Available Control Measures (RACM), including RACT, in moderate and above $PM_{2.5}$ nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)) and must implement Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious $PM_{2.5}$ nonattainment areas (see CAA section 189(b)(1)(B)). The SCAQMD regulates a $PM_{2.5}$ nonattainment area classified as serious for the 2006 24-hour $PM_{2.5}$ NAAQS and as moderate for the 1997 and 2012 $PM_{2.5}$ NAAQS (40 CFR 81.305). We generally evaluate submitted SIPs for RACM and BACM purposes as part of our action on an attainment plan as a whole.

Guidance and policy documents that we use to evaluate enforceability, SIP revisions, rule stringency requirements, and EIP recommendations include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule'' (the NO_x Supplement), 57 FR 55620, November 25, 1992.
5. ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–001, EPA OAR, January 2001.

B. Do the rules meet the evaluation criteria?

We propose to find that the revised RECLAIM regulations satisfy the applicable CAA requirements for enforceability, NSR, SIP revisions, and economic incentive programs. In order to prevent NO_x RECLAIM trading credits (RTCs) associated with facilities that have shut down from entering the RECLAIM market and potentially delaying the installation of pollution controls at other RECLAIM facilities, the revised regulations establish criteria for determining a facility shutdown and the methodology for calculating the amount of NO_x RTCs by which that facility's future RTC holdings will be reduced. These revisions are projected to reduce NO_x emissions from RECLAIM sources by 12 tons per day by 2023.

In addition, the revised regulations allow certain electric generating facilities to use RTCs held in a ''Regional NSR Holding Account'' to satisfy the NSR offset requirements specified in Rule 2005(f) but do not alter the existing requirement for all sources to hold RTCs in amounts equal to the amounts of required offsets.

The revised rules are projected to achieve significant environmental benefits and would not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements. The TSD has more information on our evaluation.

We are not reviewing the submitted rule revisions with respect to RACT requirements at this time because the District has not yet submitted an evaluation of the revised program in accordance with RACT requirements. Following the District's submission of a RACT evaluation for the revised RECLAIM rules, we intend to publish a separate proposed rule providing our evaluation of the program in accordance with RACT requirements and seeking public comment on that evaluation.

C. Public Comment and Proposed Action

The EPA is proposing to fully approve the submitted rules under section 110(k)(3) of the Act based on our conclusion that they satisfy the applicable CAA requirements for enforceability, NSR, SIP revisions, and economic incentive programs. We will accept comments from the public on this proposal until July 6, 2017. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 17, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–11681 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0557; FRL–9963–29–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Colorado submitted to demonstrate that the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO_2) on June 2, 2010, and fine particulate matter ($PM_{2.5}$) on December 14, 2012. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA.

DATES: Written comments must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2013–0557 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the 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 submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 2, 2010, the EPA promulgated a revised primary SO_2 standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). On December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 μg/m³ and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 μg/m³ (78 FR 3086, Jan. 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit SIPs providing for implementation, maintenance, and enforcement of the NAAQS. The EPA has historically referred to these SIP submissions made to satisfy sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from those intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA; ''regional haze SIP'' submissions to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Infrastructure SIP submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs for SO_2 and $PM_{2.5}$ already satisfy those requirements. EPA guidance on these provisions and their implementation may be found in the following documents: ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (October 2, 2007); ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (Sep. 25, 2009); ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (Oct. 14, 2011); and ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' (Sept. 13, 2013).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from Colorado that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). This provision directs that, within three years after the promulgation of a NAAQS, states make SIP submissions that provide for the ''implementation, maintenance, and enforcement'' of the NAAQS. The statute imposes on states the duty to make these SIP submissions, and does not condition this requirement on the EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

Section 110(a)(1) addresses the timing and general requirements for these infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The section 110(a)(2) list of required elements contains a variety of disparate provisions, some of which pertain to required legal authority, some to required substantive program provisions, and some to requirements for both authority and substantive program provisions.[1] The EPA has concluded that although the timing requirement in section 110(a)(1) is clear, some of the section 110(a)(2) language is ambiguous with respect to what is required for inclusion in an infrastructure SIP submission. For discussion of some of these ambiguities and the EPA's interpretation of them, see Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014), under ''III. What is the scope of this rulemaking?''

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007.

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. The elements that are the subject of this action are:

- 110(a)(2)(A): Emission limits and other control measures
- 110(a)(2)(B): Ambient air quality monitoring/data system
- 110(a)(2)(C): Program for enforcement of control measures
- 110(a)(2)(D): Interstate transport
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies
- 110(a)(2)(F): Stationary source monitoring and reporting
- 110(a)(2)(G): Emergency powers
- 110(a)(2)(H): Future SIP revisions
- 110(a)(2)(J): Consultation with government officials; public notification; PSD and visibility protection
- 110(a)(2)(K): Air quality modeling/data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation/participation by affected local entities.

Section VI, below, contains a detailed discussion of each of these elements.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1), and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section

110(a)(2)(C), to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D; and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. Therefore, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Further, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS, because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did Colorado address the infrastructure elements of sections 110(a)(1) and (2)?

The Colorado Department of Public Health and Environment (CDPHE) submitted certifications concerning Colorado's infrastructure SIP for the 2010 SO_2 NAAQS on July 10, 2013, and for the 2012 $PM_{2.5}$ NAAQS on December 1, 2015. Colorado's infrastructure certifications demonstrate how the State has plans in place that meet the applicable requirements of section 110 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The Colorado infrastructure SIPs were subject to public notice and comment, as indicated in the cover letter of each certification, and are available within the electronic docket for today's proposed action at *www.regulations.gov.* These plans reference the current Air Quality Control Commission (AQCC) regulations and Colorado Revised Statutes (C.R.S.). The cited AQCC regulations are available at *https://www.colorado.gov/pacific/cdphe/aqcc-regs* and *http://www.lexisnexis.com/hottopics/colorado/.* Colorado's SIP, air pollution control regulations, and statutes that have been previously approved by the EPA and incorporated into the Colorado SIP can be found at 40 CFR 52.320.

VI. Analysis of the State Submittals

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires that SIPs include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

Colorado's infrastructure SIP submissions identify existing EPA-approved SIP provisions limiting emissions of relevant pollutants. The State references a variety of SIP-approved Colorado AQCC regulations cited under element (C), including: Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides; Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements; Regulation 4, Woodburning Controls; Regulation 7, Control of Ozone via Ozone Precursors and Nitrogen Oxides; Regulation 11, Motor Vehicle Inspection; Regulation 16, Street Sanding and Sweeping; and Common Provisions Regulation. Subject to the following clarifications, the EPA proposes to find that SIP-approved AQCC regulations citied in Colorado's certifications provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

First, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, Colorado has no areas designated as nonattainment for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Colorado's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, such as limits on emissions of particulate matter (PM) in Regulation 1, woodburning controls in Regulation 4, and the State's minor NSR and PSD programs in Regulation 3. This suffices, in the case of Colorado, to meet the requirements of section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Second, as previously discussed, the EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions that are contrary to the CAA and to EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, the EPA encourages any state having a director's discretion or variance provision contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

As a final clarification, in this action the EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM operations at a facility. A number of states have SSM provisions that are contrary to the CAA and existing EPA guidance,[2] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Subject to the above clarifications, the EPA is proposing to approve Colorado's infrastructure SIP for the 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

The provisions for episode monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP (58 FR 49435, Sept. 23, 1993). As part of the monitoring SIP, Colorado submits an Annual Monitoring Network Plan (AMNP) each year for EPA approval. The EPA approved 2015 and 2016 network changes through an AMNP response letter (contained within the docket) mailed to CDPHE on December 22, 2016. The Colorado Air Pollution Control Division (APCD) also periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data.

In our August 19, 2015 rulemaking (80 FR 50205), we conditionally approved element (B) for the 2010 NO_2 NAAQS based on Colorado's commitment to install and operate a second near-road NO_2 monitoring site no later than December 31, 2015. In a letter dated February 17, 2016 (contained within this docket), the Colorado Air Pollution Control Division notified the EPA that the second near-road site in Denver became operational on October 1, 2015, thus satisfying the requirements of 40 CFR 58.10(a)(5)(iv).

We find Colorado's SIP adequate for the ambient air quality monitoring and data system requirements for the 2010

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to the EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown'' (Sep. 20, 1999).

SO_2 and 2012 $PM_{2.5}$ NAAQS, and therefore propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to ''include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure NAAQS are achieved, including a permit program as required in parts C and D.''

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. As explained elsewhere in this action, the EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

Enforcement of Control Measures Requirement

The State's submissions for the 2010 SO_2 and 2012 $PM_{2.5}$ infrastructure requirement cite a variety of SIP-approved Colorado AQCC regulations that provide for enforcement of emission limits and control measures. These include Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides; Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements; Regulation 4, Woodburning Controls; Regulation 7, Control of Ozone via Ozone Precursors and Nitrogen Oxides; Regulation 11, Motor Vehicle Inspection; Regulation 16, Street Sanding and Sweeping; and Common Provisions Regulation.

PSD Requirements

With respect to elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants; this demonstration will also satisfy the requirements of element (D)(i)(II). To meet this requirement, Colorado cited SIP approved AQCC Regulation 3 *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration.* The EPA is proposing to approve Colorado's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a PSD program in the SIP that covers all regulated pollutants including greenhouse gases (GHGs).

In addition to these requirements, there are four other revisions to the Colorado SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612); (2) the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (June 3, 2010, 75 FR 31514); (3) the NSR $PM_{2.5}$ Rule (May 16, 2008, 73 FR 28321); and (4) the final rulemaking entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864, Oct. 20, 2010).

On January 9, 2012 (77 FR 1027), we approved revisions to Colorado's PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved Colorado PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway'' sources.[3] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

The EPA is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinion. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

The EPA has determined that Colorado's SIP is sufficient to satisfy elements (C), (D)(i)(II), and (J) with respect to GHGs, because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The EPA most recently approved revisions to Colorado's PSD program on January 25, 2016 (81 FR 3963). The approved Colorado PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment. But the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) and (J). The SIP contains the currently necessary PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources.'' And the application of those requirements is not impeded by the

[3] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

presence of other previously approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Colorado's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) and on October 20, 2010, the EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for PM nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the decision. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Colorado's infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On May 11, 2012, the State submitted revisions to Regulation 3 that adopted all elements of the 2008 Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule. However, the submittal contained a definition of Major Source Baseline Date which was inconsistent with 40 CFR 51.166(b)(14)(i). On May 13, 2013, the State submitted revisions to Regulation 3 which incorporate the definition of Major Source Baseline Date which was consistent with 40 CFR 51.166(b)(14)(i). These submitted revisions make Colorado's PSD program up to date with respect to current requirements for $PM_{2.5}$. The EPA approved the necessary portions of Colorado's May 11, 2012 and May 13, 2013 submissions which incorporate the requirements of the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule on September 23, 2013 (78 FR 58186). Colorado's SIP-approved PSD program meets current requirements for $PM_{2.5}$. The EPA therefore is proposing to approve Colorado's SIP for the 2010 SO_2 and $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Regulation 3 of the Colorado SIP, and was originally approved by the EPA as Regulation 3 of the SIP (see 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and the EPA have relied on the program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

The EPA is proposing to approve Colorado's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. *Interstate transport:* The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP prohibiting emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements (or prongs) related to the impacts of air pollutants transported across state lines. The two prongs under section 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS or (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under section 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility.

In this action, the EPA is addressing the 2010 SO_2 and 2012 $PM_{2.5}$NAAQS with regard to prongs 3 (interference with PSD) and 4 (interference with visibility protection) of 110(a)(2)(D)(i). We are not addressing prongs 1 and 2 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS in this action. These prongs will be addressed in a later rulemaking.

A. Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

The PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the

requirements of the EPA's PSD implementation rule(s).[4] As noted in Section VI.3 of this proposed action, Colorado has such a program, and the EPA is therefore proposing to approve Colorado's SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Guidance on Infrastructure SIP Elements, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy prong 3 with respect to these sources is by citing EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Colorado has a SIP-approved nonattainment NSR program that ensures regulation of major sources and major modifications in nonattainment areas.[5]

As Colorado's SIP meets PSD requirements for all regulated NSR pollutants, and contains a fully approved nonattainment NSR program, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of element 3 of section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

B. Evaluation of Interference With Measures To Protect Visibility

To determine whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility protection is satisfied, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).[6]

Colorado submitted a regional haze SIP to EPA on May 25, 2011. The EPA approved Colorado's regional haze SIP on December 31, 2012 (77 FR 76871). In early 2013, WildEarth Guardians and the National Parks Conservation Association (NPCA) filed separate petitions for reconsideration of certain aspects of the EPA's approval of the Colorado's regional haze SIP.[7] After these petitions were filed, a settlement agreement was entered into concerning the Craig Generating Station by the petitioners, the EPA, CDPHE, and Tri-State Generation and Transmission Association, Inc., and filed with the court on July 10, 2014.[8] In accordance with the settlement agreement, the EPA requested and the court granted a voluntary remand to the EPA of the portions of the EPA's December 2012 regional haze SIP approval that related to Craig Unit 1. Because the additional controls at the Craig facility will be implemented through a revision to the Colorado regional haze SIP that the EPA has not yet acted on, the EPA cannot rely on this approval as automatically satisfying prong 4.

The EPA does, however, consider other aspects of our approval of Colorado's regional haze SIP to be sufficient to satisfy this requirement. Specifically, the EPA found that Colorado met its 40 CFR 51.308(d)(3)(ii) requirements to include in its regional haze SIP all measures necessary to (1) obtain its share of the emission reductions needed to meet the reasonable progress goals for any other state's Class I area to which Colorado causes or contributes to visibility impairment, and; (2) ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through a regional planning process. Colorado participated in a regional planning process with the Western Regional Air Partnership (WRAP). In the regional planning process, Colorado analyzed the WRAP modeling and determined that emissions from the State do not significantly impact other states' Class I areas.[9] Colorado accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP, and the SIP included the controls assumed in the modeling. For these reasons, the EPA determined that Colorado had satisfied the Regional Haze Rule requirements for consultation and included controls in the SIP sufficient to address the relevant requirements related to impacts on Class I areas in other states. Therefore, we are proposing to approve the Colorado SIP as meeting the requirements of prong 4 of CAA section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

5. *Interstate and International transport provisions:* CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator of the U.S. EPA (Administrator) regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Colorado's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.[10] This suffices to meet the notice requirement of section 126(a).

Colorado has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP satisfies the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

6. *Adequate resources:* Section 110(a)(2)(E)(i) requires states to provide ''necessary assurances that the State [. . .] will have adequate personnel, funding, and authority under State law to carry out [the SIP] (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof).'' Section 110(a)(2)(E)(ii) also requires each state to ''comply with the requirements respecting State boards'' under CAA section 128. Section 110(a)(2)(E)(iii) requires states to provide ''necessary assurances that, where the State has

[4] See 2013 Guidance on Infrastructure SIP Elements.

[5] *See* Colorado Regulation No. 3, Part D, Section V, which was most recently approved by EPA in a final rulemaking dated January 25, 2016 (81 FR 3963).

[6] *See* 2013 Guidance on Infrastructure SIP Elements. In addition, EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and $PM_{2.5}$ NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

[7] WildEarth Guardians filed its petition on February 25, 2013, and NPCA filed its petition on March 1, 2013.

[8] This settlement agreement is included in the docket for this action; *see also* Proposed Settlement Agreement, 79 FR 47636 (Aug. 14, 2014).

[9] *See* our proposed rulemaking on the Colorado regional Haze SIP, 77 FR 18052, March 26, 2012.

[10] See Colorado Regulation 3, Part D. IV.A.1.

relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. *Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.*

Colorado law, specifically the Colorado Air Pollution Prevention and Control Act (APPCA) Sections 25–7–105, 25–7–111, 42–4–301 to 42–4–316, 42–4–414 and Article 7 of Title 25, provides adequate authority for the State of Colorado APCD and AQCC to carry out its SIP obligations with respect to the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives Sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. The regulations cited by Colorado in its certifications, which are contained within this docket, also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Colorado's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body that approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed [11].

On April 10, 2012 (77 FR 21453) the EPA approved the Procedural Rules, Section 1.11.0, as adopted by the AQCC on January 16, 1998, into the Colorado SIP as meeting the requirements of section 128 of the Act. Section 1.11.0 specifies certain requirements regarding the composition of the AQCC and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meets the requirements of section 128 are provided in our January 4, 2012 proposal notice (77 FR 235). In our April 10, 2012 action, we correspondingly approved Colorado's infrastructure SIP for the 1997 ozone NAAQS for element (E)(ii). Colorado's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires ''(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.''

The Colorado AQCC Regulations listed in the State's certifications (Regulations 1, 3, 7, and Common Provisions Regulation) and contained within this docket provide authority to establish a program for measurements and testing of sources, including requirements for sampling and testing. Air Pollutant Emission Notice (APEN) requirements are defined in Regulation 3 and requires stationary sources to report their emissions on a regular basis through APENs. Regulation 3 also requires that monitoring be performed in accordance with EPA-accepted procedures, and record keeping of air pollutants. Additionally, Regulation 3 provides for a permitting program that establishes emission limitations and standards. Emissions must be reported by sources to the State for correlation with applicable emissions limitations and standards. Monitoring may be required for both construction and operating permits.

Additionally, Colorado is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI), which is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, modifying the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and to report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Colorado made its latest update to the NEI on January 18, 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the public at *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve the Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303 [12]] and adequate contingency plans to implement such authority.''

Under CAA section 303, the Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably ensure prompt protection, then the Administrator has the authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit. APPCA Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act.[13]

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). This can be met can by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS

[11] The EPA's proposed rule notice (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of how states could meet the requirements of CAA section 128.

[12] Discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

[13] *See* our proposed rulemaking at 80 FR 3098 (June 1, 2015), section VI.8 for a complete discussion on how APPCA Sections 25–7–112 and 35–7–113 provide authority comparable to that in CAA section 303.

if the NAAQS is covered by those regulations. The Denver Emergency Episode Plan (applicable to the Denver metropolitan area) addresses ozone, particulate matter, and carbon monoxide, and satisfies the requirements of 40 CFR part 51, subpart H (See 74 FR 47888). Furthermore, Colorado is classified as Priority III for SO_2 and accordingly is not required to submit emergency episode contingency plans for SO_2. Therefore, we propose approval of Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) ''[f]rom time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard[;] and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].''

The Colorado APPCA Sections 25–7–105(1)(a)(I) gives the AQCC sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

10. *Consultation With government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

The State has demonstrated that it has the authority and rules in place through its certifications (contained within this docket) to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, the EPA previously addressed the requirements of CAA section 127 for the Colorado SIP and determined public notification requirements are appropriate (45 FR 53147, Aug. 11, 1980).

As discussed above, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. The EPA has further evaluated Colorado's SIP approved PSD program in this proposed action under element (C) and determined the State has satisfied the requirements of element 110(a)(2)(C), as noted above. Therefore, the State has also satisfied the requirements of element 110(a)(2)(J).

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the Colorado SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

11. *Air quality and modeling/data:* Section 110(a)(2)(K) requires each SIP to provide for ''(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS]; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.''

Colorado's Regulation 3 Part A.VIII (Technical Modeling and Monitoring Requirements) requires that estimates of ambient air concentrations be based on applicable air quality models approved by the EPA. Final approval for Regulation 3 Part A.VIII became effective February 20, 1997 (62 FR 2910). Additionally, Regulation 3 Part D, Section VI.C. requires the Division to transmit to the Administrator of the EPA a copy of each permit application relating to a major stationary source or major modification subject to this regulation, and provide notice of every action related to the consideration of such permit.

Colorado has broad authority to develop and implement an air quality control program that includes conducting air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated and provide that modeling data to the EPA. This broad authority can be found in 25–7–102, C.R.S., which requires that emission control measures be evaluated against economic, environmental, energy and other impacts, and indirectly authorizes modeling activities. Colorado also has broad authority to conduct modeling and submit supporting data to the EPA to satisfy federal nonattainment area requirements (25–7–105, 25–7–205.1, and 25–7–301, C.R.S.). The State also has the authority to submit any modeling data to the EPA on request under the Colorado Open Records Act (24–72–201 to 24–72–309, C.R.S.).

As a result, the SIP provides for the air quality modeling that the Administrator has prescribed. Therefore, we propose to approve the Colorado SIP as meeting the CAA section 110(a)(2)(K) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

12. *Permitting fees:* Section 110(a)(2)(L) requires ''the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this [Act], a fee sufficient to cover[:] (i) The reasonable costs of reviewing and acting upon any application for such a permit[;] and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.''

The State of Colorado requires the owner or operator of a major stationary source to pay the Division any fee necessary to cover the reasonable costs of reviewing and acting upon any permit application. The collection of fees is described in AQCC Regulation 3, Part A.

We also note that the State has an EPA-approved title V permit program (60 FR 4563, Jan. 24, 1995) that provides for collection of permitting fees. Final approval of the title V operating permit program became effective October 16, 2000 (65 FR 49919). Interim approval of Colorado's title V operating permit program became effective February 23, 1995 (60 FR 4563). As discussed in the proposed interim approval of the title V program (59 FR 52123, October 14, 1994), the State demonstrated that the fees collected were sufficient to administer the program.

Therefore, based on the State's experience in relying on the collection of fees as described in AQCC Regulation 3, and the use of title V fees to implement and enforce PSD permits once they are incorporated into title V permits, we propose to approve the

submissions as supplemented by the State for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to ''provide for consultation and participation [in SIP development] by local political subdivisions affected by [the SIP].''

The statutory provisions cited in Colorado's SIP submittals (contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve Colorado's SIP as meeting these requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. A comprehensive summary of infrastructure elements organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1—LIST OF COLORADO INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
July 10, 2013 submittal—2010 SO_2 NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
December 1, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

TABLE 2—LIST OF COLORADO INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (Revision to be made in separate rulemaking action)
July 13, 2013 submittal—2010 SO_2 NAAQS:
(D)(i)(I) prongs 1 and 2.
December 1, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(D)(i)(I) prongs 1 and 2.

VIII. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 16, 2017.

Suzanne J. Bohan,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11574 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0709; FRL–9963–27–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of South Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act, CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO_2) on June 2, 2010, and fine particulate matter ($PM_{2.5}$) on December 14, 2012. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA.

DATES: Written comments must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0709 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for the EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the 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 submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 2, 2010, the EPA promulgated a revised primary SO_2 standard of 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). On December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 $\mu g/m^3$ and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$ (78 FR 3086, Jan. 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for SO_2 and $PM_{2.5}$ already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, the EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from South Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or

''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA; ''regional haze SIP'' submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which the EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''III. What is the Scope of this Rulemaking?''

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform'').

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did south dakota address the infrastructure elements of sections 110(a)(1) and (2)?

The South Dakota Department of Environment and Natural Resources (DENR) submitted certifications of South Dakota's infrastructure SIP for the 2010 SO_2 NAAQS on December 20, 2013 and the 2012 $PM_{2.5}$ NAAQS on January 25, 2016. South Dakota's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Infrastructure SIPs were taken out for public notice and South Dakota provided an opportunity for public hearing, as indicated in the cover letter of each certification (available within this docket). These plans reference the current Administrative Rules of South Dakota (ARSD) and South Dakota Codified Laws (SDCL). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The ARSD and SDCL referenced in the submittals are publicly available at *http://legis.sd.gov/rules/RulesList.aspx* and *http://legis.sd.gov/Statutes/Codified_Laws/default.aspx.* South Dakota's SIP, air pollution control regulations and statutes that have been previously approved by the EPA and incorporated into the South Dakota SIP can be found at 40 CFR 52.2170.

VI. Analysis of the State Submittals

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

and timetables for compliance, as may be necessary or appropriate, to meet the applicable requirements of this Act.

Multiple SIP-approved state air quality regulations within the ARSD and cited in South Dakota's certifications provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, South Dakota has no areas designated as nonattainment for the 2010 SO_2 or 2012 $PM_{2.5}$ NAAQS. South Dakota's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, including major and minor source permit programs. This suffices, in the case of South Dakota, to meet the requirements of section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Second, as previously discussed, the EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, the EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Third and finally, in this action, the EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM or operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance[2] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, the EPA is proposing to approve South Dakota's infrastructure SIP for the 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

Under ARSD 74:36:02, the DENR operates a network of air monitoring sites. The EPA approved South Dakota's 2016 network changes through an Ambient Air Monitoring Plan response letter (contained within the docket) mailed to the DENR on November 1, 2016. The State of South Dakota submits data to the EPA's Air Quality System database in accordance with the deadlines in 40 CFR 58.16. South Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

We find that South Dakota's SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS; and therefore, propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to ''include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure NAAQS are achieved, including a permit program as required in parts C and D.''

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. As explained elsewhere in this action, the EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

Enforcement of Control Measures Requirement

The State's submissions cite SIP approved ARSD Chapter 74:36:09 (Prevention of significant deterioration) and ARSD Chapter 74:36:20 (Construction permits for new sources and modifications) which provide for the enforcement of emission limits and control measures. SDCL 34A–1–39 through 34A–1–54 and 34A–1–62 gives the DENR authority to provide enforcement of South Dakota's measure and regulations that require new sources or modifications to existing sources to apply for and obtain an air quality permit before constructing.

PSD Requirements

With respect to elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of element (D)(i)(II) prong 3 (PSD) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. South Dakota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

South Dakota implements the PSD program by, for the most part, incorporating by reference the federal PSD program as it existed on a specific date. The State periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that the EPA has promulgated prior to the revised date of incorporation by reference.

On June 30, 2011, we approved a revision to the South Dakota PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (76 FR 43912, July 22, 2011). As a result, the approved South Dakota PSD program meets current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to the EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (Sept. 20, 1999).

source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' [3] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

The EPA is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinion. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined that South Dakota's SIP is sufficient to satisfy elements (C), (D)(i)(II) prong 3, and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The EPA most recently approved revisions to South Dakota's PSD program on October 13, 2016 (81 FR 70626). The approved South Dakota PSD permitting program does not contain provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment, as these provisions were removed in 81 FR 70626. The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of South Dakota's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) and on October 20, 2010 the EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for PM nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of South Dakota's infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On July 22, 2011, we approved revisions to ARSD Chapter 74:36:09 that adopted by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2009 (76 FR 43912, July 22, 2011). As July 1, 2009 is after the effective date of the 2008 $PM_{2.5}$ Implementation Rule, 76 FR 43912 incorporated the requirements of the 2008 $PM_{2.5}$ Implementation Rule; specifically, 40 CFR 52.21(b)(23)(i) and 52.21(b)(50). On July 29, 2013, the State submitted revisions amending the ARSD pertaining to the issuance of South Dakota air quality permits. On June 27, 2014, we acted on two pieces from the July 29, 2013 submittal (see 79 FR

[3] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

36419) which included the removal of ARSD Chapter 74:36:04:03:01 (Minor Source Operating Permit Variance) and revisions to ARSD Chapter 74:36:10 (New Source Review). The July 29, 2013, submittal also included revisions to ARSD Chapter 74:36:09 (Prevention of Significant Deterioration) which we acted on in our January 29, 2015 rulemaking (80 FR 4799). The revision adopted by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2012. As July 1, 2012, is after the effective date of the 2010 $PM_{2.5}$ Increment Rule, the revisions to ARSD 74:36:09 as submitted on July 29, 2013, incorporated the requirements of the 2010 $PM_{2.5}$ Increment Rule; specifically, 40 CFR 52.21(b)(14)(i),(ii),(iii), (b)(15)(i),(ii), and paragraph (c). We approved the necessary portions of the July 29, 2013 submission to reflect the requirements of the 2010 $PM_{2.5}$ Increment Rule. South Dakota's SIP-approved PSD program therefore meets current requirements for $PM_{2.5}$. As a result, the EPA is proposing to approve South Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by the EPA on September 6, 1995 (60 FR 46222). Since approval of the minor NSR program, the State and the EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Additionally, the EPA is not proposing to approve or disapprove any state rules with regard to the NSR Reform requirements because they are outside the scope of this action. The EPA's action taken on changes to South Dakota's minor source NSR program (79 FR 36419, June 27, 2014) does not impact the approvability of Section 110(a)(2)(C) in this action.

The EPA is proposing to approve South Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. *Interstate transport:* The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements (or prongs) related to the impacts of air pollutants transported across state lines. The two elements under section 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under section 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility. In this action, the EPA is only addressing prongs 3 (interference with PSD) and 4 (interference with visibility protection) of 110(a)(2)(D)(i) with regard to the 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. We are not addressing prong 1 or prong 2 for either NAAQS in this action, and will address these prongs in a later rulemaking.

A. Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

South Dakota's certifications for both the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS both referenced the State's SIP-approved PSD program to address prong 3 and 4 of 110(a)(2)(D)(i). Both certifications can be found in the docket for this action. With regard to the PSD portion of section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[4] As noted in Section VI.3 of this proposed action, South Dakota has such a program, and the EPA is therefore proposing to approve South Dakota's SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. South Dakota does not contain any nonattainment areas. The consideration of nonattainment NSR for element 3 is therefore not relevant as all major sources locating in the State are subject to PSD. As South Dakota's SIP meets PSD requirements for all regulated NSR pollutants, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

B. Evaluation of Interference With Measures To Protect Visibility

To determine whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility protection is satisfied, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).[5]

South Dakota submitted a regional haze SIP to the EPA on January 21, 2011, and submitted an amendment to the SIP on September 19, 2011. The EPA approved South Dakota's regional haze SIP on April 26, 2012 (77 FR 24845). The EPA is proposing to find that as a result of the prior approval of the South Dakota regional haze SIP, the South Dakota SIP contains adequate provisions to address the 110(a)(2)(D)(i) visibility requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Therefore, we are proposing to approve the South Dakota SIP as meeting the requirements of prong 4 of CAA section 110(a)(2)(D)(i) for both of these NAAQS.

[4] See 2013 Memo.

[5] See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and $PM_{2.5}$ NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

5. *Interstate and International transport provisions:* CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator of the U.S. EPA (Administrator) regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), South Dakota's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.[6] This suffices to meet the notice requirement of section 126(a).

South Dakota has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

6. *Adequate resources:* Section 110(a)(2)(E)(i) requires states to provide ''necessary assurances that the state [. . .] will have adequate personnel, funding, and authority under State law to carry out [the SIP] (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof).'' Section 110(a)(2)(E)(ii) also requires each state to ''comply with the requirements respecting state boards'' under CAA section 128. Section 110(a)(2)(E)(iii) requires states to provide ''necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the state has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

SDCL 34A–1–57 through 34A–1–60 provide adequate authority for the State of South Dakota and the DENR to carry out its SIP obligations with respect to the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant from the EPA along with required state matching funds to provide funding necessary to carry out South Dakota's SIP requirements. South Dakota's resources meet the requirements of CAA section 110(a)(2)(E). The regulations cited by South Dakota in their certifications and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve South Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-Element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.[7]

On January 29, 2015 (80 FR 4799), the EPA approved SDCL 1–40–25.1 and revisions to ARSD 74:09, Procedures Board of Minerals and Environment, into the South Dakota SIP as meeting the requirements of section 128 of the Act. SDCL 1–40–25.1 addresses board composition requirements in section 128(a)(1) and ARSD 74:09 addresses conflict of interest requirements in section 128(a)(2). Details on how these portions of the SDCL and ARSD meet the requirements of section 128 are provided in our December 1, 2014 (79 FR 71040) proposal notice. In our January 29, 2015 action, we correspondingly approved South Dakota's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$, 2008 lead, 2008 ozone and 2010 NO_2 NAAQS for element (E)(ii). South Dakota's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires: (i) ''The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.''

The South Dakota provisions listed in the State's certifications and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. South Dakota's SIP approved continuous emissions monitoring system rules (ARSD 74:36:13 and contained within this docket) require facilities to monitor and report emission data. ARSD 74:36:04:15(10), Contents of operating permit, requires operating permits for minor sources to include monitoring and related record keeping and reporting requirements. Reports contain the quantity of hazardous air pollutants, in tons, emitted for each 12-month period in the reporting period and supporting documentation. Operating permits for minor sources must comply with emission limits and other requirements of the Act (ARSD 74:36:04:04 and ARSD 74:36:04:15).

Additionally, ARSD 74:36:05:16.01(9) is applicable regarding data from sources with title V permits. South Dakota has an approved title V program (61 FR 2720, Jan. 29, 1996) and the definition of applicable requirements for a Part 70 source has been approved into its SIP at ARSD 74:36:01:05. This re-enforces a facility's record keeping and reporting emissions data responsibilities under title V permitting, even though the title V program is not approved into the SIP.

Furthermore, South Dakota is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data.

[6] See ARSD 74:36:09:03.

[7] The EPA's proposed rule notice (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of how states could meet the requirements of CAA section 128.

All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Dakota made its latest update to the NEI on January 15, 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve the South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303 [8]] and adequate contingency plans to implement such authority.''

Under CAA section 303, the Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit. SDCL section 34A–1–45 and ARSD section 74:36:03:01 provide APCD with general emergency authority comparable to that in section 303 of the Act.[9]

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). This can be met can by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations.

Rules contained in ARSD and South Dakota's SIP adopt by reference the criteria in 40 CFR 51.151 as the air quality episode plan to address activities causing imminent and substantial endangerment to public health, including a contingency plan to implement the emergency episode provisions of the SIP. As of the date of South Dakota's submittal, the EPA has not established priority classification for a significant harm level for $PM_{2.5}$.

Subpart H of 40 CFR part 51 requires states to classify regions and to develop contingency plans (also known as emergency episode plans) after ambient concentrations of certain criteria pollutants in an area have exceeded specified levels. However, Subpart H does not currently address requirements for the 24-hour $PM_{2.5}$ standard. In 2009, the EPA issued a guidance memorandum that, among other things, recommended an approach for states to address the contingency plan requirements of 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.[10] The guidance, in Attachment A, suggested that states develop a contingency plan if, based on the most recent three calendar years of data, an area within the state had monitored and recorded a 24-hour $PM_{2.5}$ level greater than 140.4 mg/m3. For states that were to develop a contingency plan, the guidance recommended states set priority and emergency levels consistent with requirements of 40 CFR 51.150 through 51.153. The EPA notes that section 51.153 requires periodic reevaluation of priority classifications based on the three most recent years of air quality data.

South Dakota has recorded no levels of ambient air concentrations in the three most recent complete calendar years—2013, 2014, and 2015—that exceed the 2009 guidance memorandum.[11] Furthermore, South Dakota's is classified as Priority III for SO_2 and is therefore not required to submit emergency episode contingency plans for SO_2.

Revisions to the South Dakota Air Quality Episodes rules ARSD 74:36:03:01 ''Air pollution emergency episode'' and ARSD 74:36:03:02 ''Episode emergency contingency plan'' were most recently approved on June 27, 2014 (79 FR 36425). We find that South Dakota's air pollution emergency rules include $PM_{2.5}$, and SO_2; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for $PM_{2.5}$ and SO_2. The SIP therefore meets the requirements of 110(a)(2)(G). Based on the above analysis, we propose approval of South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) ''[f]rom time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard[;] and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].''

South Dakota's statutory provision at SDCL 34A–1–6 gives DENR sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

The State has demonstrated it has the authority and rules in place through its certifications (contained within this docket) to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the

[8] Discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

[9] *See* our proposed rulemaking at 79 FR 71053 (December 1, 2014), section VI.8 for a complete discussion on how SDCL section 34A–1–45 and ARSD section 74:36:03:01 provide authority comparable to that in CAA section 303.

[10] Memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) Standards (NAAQS), at p. 6–7 (Sep. 25, 2009).

[11] Memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) Standards (NAAQS), at p. 6–7 (Sep. 25, 2009).

SIP applies, consistent with the requirements of CAA section 121. Furthermore, the EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP and determined public notification requirements are appropriate (45 FR 58525, Sept. 4, 1980).

As previously discussed, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. The EPA has further evaluated South Dakota's SIP approved PSD program in this proposed action under element (C) and determined the State has satisfied the requirements of element 110(a)(2)(C), as previously noted. Therefore, the State has also satisfied the requirements of element 110(a)(2)(J).

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

11. *Air quality and modeling/data:* Section 110(a)(2)(K) requires each SIP to provide for: (i) ''the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS]; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.''

South Dakota's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 40 CFR 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator.

Additionally, SDLC section 34A–1–1, 34A–1–10, and 1–40–31 provide the Department with the authority to advise, consult, and cooperate with the EPA and provide the EPA with public records, such as air quality modeling. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed. Therefore, we propose to approve the South Dakota SIP as meeting the CAA section 110(a)(2)(K) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

12. Permitting Fees

Section 110(a)(2)(L) requires ''the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this [Act], a fee sufficient to cover[;] (i) the reasonable costs of reviewing and acting upon any application for such a permit[;] and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.''

The funding sources used for the PSD permit reviews conducted by South Dakota derive from EPA grant and matching State general funds.[12] In light of the State's experience that funding from grants and general funds has been sufficient to operate a successful PSD program, it is reasonable that the PSD permit applicants are not charged any permit-specific fees.

We also note that all the State SIPs we are proposing to approve in this action cite the regulation that provides for collection of permitting fees under the State's EPA-approved title V permit program (ARSD 74:37:01), which we approved and became effective February 28, 1996 (61 FR 2720, Jan. 29, 1996). Therefore, based on the State's experience in relying on the grant and general funds for PSD permits, and the use of title V fees to implement and enforce PSD permits once they are incorporated into title V permits, we propose to approve the submissions as supplemented by the State for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) requires states to ''provide for consultation and participation [in SIP development] by local political subdivisions affected by [the SIP].''

The statutory provisions cited in South Dakota's SIP submittals (SDCL section 34–A–1 and 34A–1–10 *Environmental Protection,* contained within this docket) provide the South Dakota DENR with the authority to advise, consult, and cooperate with agencies of the state, local governments, industries, other states, interstate or inter-local agencies, the federal government, and with interested persons or groups and therefore meet the requirements of CAA section 110(a)(2)(M). We propose to approve South Dakota's SIP as meeting these requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. A comprehensive summary of infrastructure elements organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1—LIST OF SOUTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
December 20, 2013 submittal—2010 SO_2 NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
January 25, 2016 submittal—2012 $PM_{2.5}$ NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

[12] *See* Email from Brian Gustafson ''Question Regarding Permitting Fees for SD iSIP Action'' July 24, 2014, available within docket.

TABLE 2—LIST OF SOUTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (Revision to be made in separate rulemaking action.)
December 20, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(I) prongs 1 and 2.
January 25, 2016 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(I) prongs 1 and 2.

VIII. Statutory and Executive Orders Review

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 16, 2017.

Suzanne J. Bohan,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11573 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2017–0202; FRL–9962–40–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, New Hampshire, Rhode Island, and Vermont; Revisions to State Plan for Designated Facilities and Pollutants: New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve: Negative declarations for commercial and industrial solid waste incinerators for the State of Connecticut, the State of New Hampshire, the State of Rhode Island, and the State of Vermont; negative declarations for hospital/medical/infectious waste incinerators for the State of Rhode Island; and revisions to the state plan for existing large and small municipal waste combustors for the State of New Hampshire. This action is being made in accordance with sections 111 and 129 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0202 at *https://www.regulations.gov,* or via email to *bird.patrick@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency,

Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA 02109–0287. Telephone: 617–918–1584. Fax: 617–918–0668. Email *bird.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State Plan revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: April 20, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017–10917 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA–HQ–OW–2009–0819; FRL–9962–51–OW]

RIN 2040–AF76

Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to administrative petitions for reconsideration, the Environmental Protection Agency (EPA) proposes to postpone certain compliance dates in the effluent limitations guidelines and standards for the steam electric point source category under the Clean Water Act (''CWA''), published in the **Federal Register** on November 3, 2015. Specifically, EPA proposes to postpone the compliance dates for the new, and more stringent, best available technology economically achievable (''BAT'') effluent limitations and pretreatment standards for each of the following wastestreams: Fly ash transport water, bottom ash transport water, flue gas desulfurization (''FGD'') wastewater, flue gas mercury control wastewater, and gasification wastewater. These compliance dates would be postponed until EPA completes reconsideration of the 2015 Rule.

DATES: Comments on this proposed rule must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0819, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Contact Ronald Jordan, United States Environmental Protection Agency, Engineering and Analysis Division; telephone number: (202) 564–1003; email address: *jordan.ronald@epa.gov.*

Electronic copies of this document and related materials are available on EPA's Web site at *https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule.* Copies of this proposed rule are also available at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Postponement

On November 3, 2015, the EPA issued a final rule amending 40 CFR part 423, the effluent limitations guidelines and standards for the steam electric power generating point source category, under Sections 301, 304, 306, 307, 308, 402, and 501 of the CWA (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361). The amendments addressed and contained limitations and standards on various wastestreams at steam electric power plants: Fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate. Collectively, this rulemaking is known as the ''Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category'' (''Rule''). For further information on the Rule, see 80 FR 67838 (Nov. 3, 2015).

EPA received seven petitions for review of the Rule. The United States Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al.* v. *EPA,* No. 15–60821.

In a letter dated March 24, 2017, the Utility Water Act Group (''UWAG'') [1] submitted a petition for reconsideration of the Rule and requested that EPA suspend the Rule's approaching deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. In a letter dated April 5, 2017, the Small Business Administration (SBA) Office of Advocacy sent EPA a second petition for reconsideration of the Rule, which expressly supports the UWAG's petition and raises issues that SBA considers are pertinent to small businesses. The petitions raise wide-ranging and sweeping objections to the Rule.[2] Among other things, the UWAG petition points to new data, claiming that plants burning subbituminous and bituminous coal cannot comply with the rule's limitations and standards for FGD wastewater through use of EPA's model technology. EPA wishes to review these data. UWAG also requested that EPA

[1] According to the petition, UWAG is a voluntary, ad hoc, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association.

[2] A copy of each petition and the supplemental information is included in the docket for this rule, Docket ID No. EPA–HQ–OW–2009–0819.

suspend or delay the ''rule's fast-approaching compliance deadlines while EPA works to reconsider and revise, as appropriate, the substantive requirements of the current rule.''

In an April 12, 2017 letter to those who submitted the reconsideration petitions, the Administrator announced his decision to reconsider the Rule (a copy of this letter is included in the docket for the rule). As explained in that letter, after considering the objections raised in the reconsideration petitions, the Administrator determined that it is appropriate and in the public interest to reconsider the Rule. On April 14, 2017, the EPA requested that the Fifth Circuit hold the case in abeyance while the Agency undertakes reconsideration. On April 24, 2017, the Fifth Circuit granted the motion and placed the case in abeyance.

The earliest compliance date for the new, and more stringent, BAT effluent limitations and pretreatment standards is November 1, 2018, for each of the following wastestreams: Fly ash transport water, bottom ash transport water, FGD wastewater, flue gas mercury control wastewater, and gasification wastewater. As UWAG pointed out in its April 13, 2017 letter ''a rule of this magnitude and complexity requires substantial time to come into compliance for multiple wastestreams. Detailed studies and planning, followed by large capital expenditures and subsequent installation and testing, are time-consuming.'' Companies have been evaluating their compliance options and are reaching the point at which they will be committing funds, incurring costs, or commencing construction to install technologies. In light of these imminent planning and capital expenditures that facilities incurring costs under the Rule will need to undertake in order to meet the compliance deadlines for the new, more stringent limitations and standards in the Rule—which are as early as November 1, 2018, for direct dischargers and no later than November 1, 2018, for indirect dischargers—the Agency views that it is appropriate to postpone the compliance dates of the Rule that have not yet passed. *See* 80 FR 67838, 67863–67868 (Nov. 3, 2015) (discussion of costs of the rule). This will preserve the regulatory status quo with respect to wastestreams subject to the Rule's new, and more stringent, limitations and standards, while the reconsideration is underway. While EPA is not making any concession of error with respect to the rulemaking, the far-ranging issues contained in the reconsideration petitions warrant careful and considerate review of the rule, as well as relief from the certain deadlines under the Rule while EPA considers the issues raised by petitioners. The postponement of compliance dates through this action is intended as a temporary, stopgap measure to prevent the unnecessary expenditure of resources until EPA completes reconsideration of the 2015 rule. EPA solicits comments on whether this postponement should be for a specified period of time, for example, two years.

In a separate action, EPA administratively postponed certain compliance dates in the rule pursuant to Section 705 of the Administrative Procedure Act (''APA''), 5 U.S.C. 705, which states that ''[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial review.'' Because Section 705 of the APA authorizes an Agency to postpone the effective date of an action pending judicial review, EPA is undertaking this notice-and-comment rulemaking to postpone certain compliance dates in the rule in the event that the litigation ends, and while the Agency is undertaking reconsideration. These compliance dates would be postponed until EPA promulgates a final rule specifying compliance dates.

II. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action as that term is defined in Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this proposed rule is not subject to requirements of E.O. 12866 that apply to significant regulatory actions.

B. Paperwork Reduction Act

This proposed rule does not involve any information collection activities subject to the PRA, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA)

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

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

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

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

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA previously determined that the environmental health risks or safety risks addressed by the requirements EPA is proposing to postpone do not present a disproportionate risk to children.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

This is a proposal to delay action, and it does not change the requirements of the effluent limitations guidelines and standards published in 2015. While the proposed postponement in compliance dates could delay the protection the 2015 rule would afford to all communities, including those impacted disproportionately by the pollutants in certain wastewater discharges, this action will not change any impacts of the 2015 rule when it is fully implemented. The EPA therefore believes it is more appropriate to consider the impact on minority and low-income populations in the context

of possible substantive changes as part of any reconsideration of the 2015 rule.

List of Subjects in 40 CFR Part 423

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

Dated: May 25, 2017.

E. Scott Pruitt,

Administrator.

■ Therefore, 40 CFR Chapter I is proposed to be amended as follows:

PART 423—STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

■ 2. Section 423.10 is amended by designating the undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 423.10 Applicability.

* * * * *

(b) The compliance dates specified in §§ 423.13(g)(1)(i), (h)(1)(i), (i)(1)(i), (j)(1)(i), and (k)(1)(i) and 423.16(e), (f), (g), (h), and (i) are postponed.

■ 3. Section 423.13 is amended by revising the introductory text to read as follows:

§ 423.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this part must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). For applicability of the requirements in §§ 423.13(g)(1)(i), (h)(1)(i), (i)(1)(i), (j)(1)(i), and (k)(1)(i), see § 423.10(b).

* * * * *

■ 4. Section 423.16 is amended by revising the introductory text to read as follows:

§ 423.16 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for existing sources (PSES) by July 1, 1984. For applicability of the requirements in §§ 423.16(e), (f), (g), (h), and (i), see § 423.10(b).

* * * * *

[FR Doc. 2017–11221 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 17–134; FCC 17–62]

Assessment and Collection of Regulatory Fees for Fiscal Year 2017

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) will revise its Schedule of Regulatory Fees in order to recover an amount of $356,710,992 that Congress has required the Commission to collect for fiscal year 2017, as amended, provides for the annual assessment and collection of regulatory fees under and respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Submit comments on or before June 22, 2017, and reply comments on or before July 7, 2017.

ADDRESSES: You may submit comments, identified by MD Docket No. 17–134, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.
- *Email: ecfs@fcc.gov.* Include MD Docket No. 15–121 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM), FCC 17–62, MD Docket No. 17–134 adopted on May 22, 2017 and released on May 23, 2017. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

A. Ex Parte Rules Permit-But-Disclose Proceeding

1. This *Notice of Proposed Rulemaking (FY 2017 NPRM)* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in

lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

2. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

3. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (''PDF'') at: *http://www.fcc.gov.*

C. Initial Regulatory Flexibility Analysis

5. An initial regulatory flexibility analysis (IRFA) is contained in this summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Initial Paperwork Reduction Act of 1995 Analysis

6. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Introduction

7. In this Notice of Proposed Rulemaking, we seek comment on the Commission's proposed regulatory fees for fiscal year (FY) 2017. We propose to collect $356,710,992 in regulatory fees for FY 2017, as detailed in the proposed fee schedules attached in Table 4.

III. Background

8. The Commission is required by Congress to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of its appropriation.[1] Regulatory fees, mandated by Congress, are collected ''to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.'' [2] Regulatory fees are to ''be derived by determining the full-time equivalent number of employees performing'' these activities, ''adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities . . . .'' [3] Regulatory fees recover direct costs, such as salary and expenses; indirect costs, such as overhead functions; and support costs, such as rent, utilities, or equipment.[4] Regulatory fees also cover the costs incurred in regulating entities that are statutorily exempt from paying regulatory fees,[5] entities whose regulatory fees are waived,[6] and entities providing services for which we do not assess regulatory fees.

9. Congress sets the amount the Commission must collect each year in the Commission's fiscal year appropriations. Section 9(a)(2) of the Communications Act of 1934, as amended (Communications Act or Act) requires the Commission to collect fees sufficient to offset the amount appropriated.[7] To calculate regulatory fees, the Commission allocates the total collection target across all regulatory fee categories. The allocation of fees to fee categories is based on the Commission's calculation of Full Time Employees (or

[1] 47 U.S.C. 159(b)(1)(B). The Commission collected $4.25 million above the required regulatory fee target goal in FY 2016, which the Commission deposited into the U.S. Treasury. The cumulative overcollection is $102.62 million as of September 30, 2016.

[2] 47 U.S.C. 159(a).

[3] 47 U.S.C. 159(b)(1)(A).

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* Report and Order, 19 FCC Rcd 11662, 11666, para. 11 (2004) (*FY 2004 Report and Order*).

[5] For example, governmental and nonprofit entities are exempt from regulatory fees under section 9(h). 47 U.S.C. 159(h); 47 CFR 1.1162.

[6] 47 CFR 1.1166.

[7] 47 U.S.C. 159(a)(2).

FTEs) in each regulatory fee category.[8] FTEs are classified as ''direct'' if the employee is in one of the four ''core'' bureaus; otherwise, that employee is considered an ''indirect'' FTE.[9] The total FTEs for each fee category includes the direct FTEs associated with that category, plus a proportional allocation of indirect FTEs.[10] The Commission then allocates the total amount to be collected among the various regulatory fee categories within each of the core bureaus. Each regulatee within a fee category pays its proportionate share based on an objective measure, *e.g.,* revenues or number of subscribers.[11]

10. The Commission annually reviews the regulatory fee schedule, proposes changes to the schedule to reflect changes in the amount of its appropriation, and proposes increases or decreases to the schedule of regulatory fees.[12] The Commission will make changes to the regulatory fee schedule ''if the Commission determines that the schedule requires amendment to comply with the requirements'' [13] of section 9(b)(1)(A) of the Act.[14] The Commission may also add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services ''as a consequence of Commission rulemaking proceedings or changes in law.'' [15]

11. As part of its annual review, the Commission regularly seeks to improve its regulatory fee analysis. For example, in the *FY 2013 Report and Order,* the Commission adopted updated FTE allocations to more accurately reflect the number of FTEs working on regulation and oversight of the regulatees in the various fee categories; [16] reallocated some FTEs from the International Bureau as indirect; [17] combined the UHF and VHF television stations into one regulatory fee category; [18] and added Internet Protocol Television (IPTV) to the cable television regulatory fee category.[19] Subsequently, in the *FY 2014 Report and Order,* the Commission adopted a new regulatory fee subcategory for toll free numbers within the Interstate Telecommunications Service Provider (ITSP) [20] category; [21] increased the de minimis threshold to $500 for annual regulatory fee payors; [22] and eliminated several categories from the regulatory fee schedule.[23] In the *FY 2015 NPRM,* the Commission adjusted regulatory fees for radio and television broadcasters, based on the type and class of service and on the population served; [24] adopted an increase in the regulatory fee for Direct Broadcast Satellite (DBS) providers in the subcategory within the cable television and IPTV regulatory fee category; [25] and adopted an across the board fee increase for the Commission's moving expenses.[26]

IV. Discussion

12. The Commission proposes to collect $356,710,992 in regulatory fees for FY 2017,[27] pursuant to section 9 of the Communications Act.[28] These regulatory fees are mandated by Congress and are collected ''to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.'' [29] We seek comment on the proposed regulatory fee schedule in Table 4.

A. Allocating FTEs for Regulatory Fee Purposes

13. Under section 9 of the Act, regulatory fees are to ''be derived by determining the full-time equivalent number of employees performing'' these activities, ''adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities . . . .'' [30] As a general matter, we reasonably expect that the work of the FTEs in the core bureaus should remain focused on the industry segment regulated by each of those bureaus. The work of the FTEs in the indirect bureaus and offices benefits the Commission and the telecommunications industry and is not specifically focused on the licensees of a particular core bureau. Given the significant implications of reassignment of FTEs in our fee calculation, we make changes to FTE classifications only after performing considerable analysis and finding the clearest case for reassignment.[31] For example, the Commission in the *FY 2016 Report and Order* declined to combine the regulatory fee categories for CMRS and ITSP categories, finding that doing so would not account for the substantial differences between the services in terms of regulatory oversight by the two bureaus.[32]

[8] One FTE is a unit of measure equal to the work performed annually by a full time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget.

[9] The core bureaus are the Wireline Competition Bureau, Wireless Telecommunications Bureau, Media Bureau, and part of the International Bureau. The indirect FTEs are the employees from the following bureaus and offices: Enforcement Bureau, Consumer & Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, part of the International Bureau, Chairman and Commissioners' offices, Office of the Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, and Office of Administrative Law Judges.

[10] The Commission observed in the *FY 2013 Report and Order* that ''the high percentage of the indirect FTEs is indicative of the fact that many Commission activities and costs are not limited to a particular fee category and instead benefit the Commission as a whole.'' *See Assessment and Collection of Regulatory Fees for Fiscal Year 2013,* Report and Order, 28 FCC Rcd 12351, 12357, para. 17 (2013) (*FY 2013 Report and Order*).

[11] *See Procedures for Assessment and Collection of Regulatory Fees,* Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8461 through 62, paras. 8 through 11 (2012) (*FY 2012 NPRM*).

[12] 47 U.S.C. 159(b)(1)(B).

[13] 47 U.S.C. 159(b)(2).

[14] 47 U.S.C. 159(b)(1)(A).

[15] 47 U.S.C. 159(b)(3).

[16] *FY 2013 Report and Order,* 28 FCC Rcd at 12354–58, paras. 10–20. The Commission now updates the FTE allocations annually. This was recommended in a report issued by the Government Accountability Office (GAO) in 2012. *See* GAO ''Federal Communications Commission Regulatory Fee Process Needs to be Updated,'' GAO-12-686 (August 2012) (GAO Report) at 36 (available at *http://www.gao.gov/products/GAO-12-686*).

[17] *FY 2013 Report and Order,* 28 FCC Rcd at 12355 through 58, paras. 13 through 20.

[18] *Id.,* 28 FCC Rcd at 12361 through 62, paras. 29 through 31.

[19] *Id.,* 28 FCC Rcd at 12362–63, paras. 32–33.

[20] The ITSP category includes interexchange carriers (IXCs), incumbent local exchange carriers, toll resellers, and other IXC service providers.

[21] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10777 through 79, paras. 25 through 28 (2014) (*FY 2014 Report and Order*).

[22] *FY 2014 Report and Order,* 29 FCC Rcd at 10774 through 76, paras. 18 through 21.

[23] *Id.,* 29 FCC Rcd at 10776–77, paras. 22 through 24.

[24] *Assessment and Collection of Regulatory Fees for Fiscal Year 2016,* Report and Order, 31 FCC Rcd 10339, 10350–51, paras. 31 through 33 (2016) (*FY 2016 Report and Order*).

[25] *FY 2016 Report and Order,* 31 FCC Rcd at 10347–350, paras. 25–30.

[26] *Id.,* 31 FCC Rcd at 10341, para. 7.

[27] *See* Consolidated Appropriations Act, 2017, Division E—Financial Services and General Government Appropriations Act, 2017, Title V—Independent Agencies, Public Law 115–31 (May 5, 2017), available at *https://www.congress.gov/bill/115th-congress/house-bill/244/text.* This provides the Commission with $356,710,992 for salaries and expenses, to be raised through section 9 regulatory fees, of which $16,866,992 is directed to be spent on completing the Commission's move and/or restacking.

[28] 47 U.S.C. 159.

[29] 47 U.S.C. 159(a).

[30] 47 U.S.C. 159(b)(1)(A).

[31] *FY 2013 Report and Order,* 28 FCC Rcd at 12357, para. 19. The Commission observed that the International Bureau was a ''singular case'' because the work of those FTEs ''primarily benefits licensees regulated by other bureaus.'' *Id.,* 28 FCC Rcd at 12355, para. 14.

[32] *FY 2016 Report and Order,* 31 FCC Rcd at 10346–47, para. 22.

14. The Commission has 1,431 FTEs funded by regulatory fees, of which 424 are currently direct FTEs.[33] Of these, 167 would be allocated to Wireline Competition Bureau regulatees, 141 would be allocated to Media Bureau regulatees, 92 would be allocated to Wireless Telecommunications Bureau regulatees, and 24 would be allocated to International Bureau regulatees.[34] As explained below, we propose to reallocate 38 FTEs associated with Universal Service Fund work as indirect and to reallocate four FTEs that work on wireless numbering issues to the Wireless Telecommunications Bureau. As a result of this proposed reallocation, we project that we would collect approximately 32.38 percent of regulatory fees (or $115.5 million) from Wireline Competition Bureau regulatees, 36.53 percent of regulatory fees (or $130.3 million) from Media Bureau regulatees, 24.87 percent of regulatory fees (or $88.7 million) from Wireless Telecommunications Bureau regulatees, and 6.22 percent of regulatory fees (or $22.2 million) from International Bureau regulatees.

1. Reallocating FTEs Associated With the Universal Service Fund

15. We believe that continuing changes to the USF regulatory landscape requires us to reexamine the appropriateness of treating Universal Service Fund FTEs as direct FTEs. To start, we estimate that there are approximately 51 FTEs in the Wireline Competition Bureau, including the bureau front office, devoted to the Universal Service Fund, with 13 of those FTEs devoted to the high-cost program. We also estimate that there are approximately 3 FTEs in the Wireless Telecommunications Bureau, including the bureau front office, devoted to implementing the Mobility Fund, a universal service high-cost support mechanism devoted exclusively to mobile services.[35] We note that other FTEs throughout the Commission working on universal service issues are assigned as indirect FTEs. This includes the many FTEs working on universal service issues in the Enforcement Bureau, the Office of the Managing Director, the Office of the Inspector General, and the Office of the General Counsel.

16. We propose to ''adjust[ ]'' the allocation of these direct FTEs ''to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities . . . ''[36] Specifically, we propose to reallocate the 38 FTEs associated with the non-high-cost programs of the Universal Service Fund as indirect. *First,* we note that contributions to the Universal Service Fund are not only required from Wireline Competition Bureau regulatees but every provider using any technology that has end-user interstate telecommunications revenue is required to contribute to the Universal Service Fund.[37] *Second,* we note that three of the distribution programs—E-Rate, Lifeline, and Rural Healthcare—tie funding eligibility to the beneficiary, whether it be a school, a library, a low-income individual or family, or a rural healthcare provider. None of these beneficiaries are Commission regulatees. *Third,* we note that wireless carriers now serve a substantial, if not majority, of Lifeline subscribers, and satellite operators, Wi-Fi network installers, and fiber builders may all receive funding through the E-Rate and Rural Healthcare programs. *Fourth,* we note that treating these FTEs as indirect would be more consistent with how FTEs working on universal service issues are treated elsewhere in the Commission. We seek comment on this proposal. We specifically seek comment on whether the statute requires us to impose regulatory fees on the regulatees of a single bureau even though the benefits provided by those FTEs accrue to regulatees of other bureaus as well as non-regulatees.

17. We also seek comment on alternatives. Although the high-cost program has historically been tied to Wireline Competition Bureau regulatees, the Commission's recent actions such as the adoption of the Mobility Fund Phase II and the Connect America Fund Phase II reverse auctions open eligibility to many other providers. Do these recent changes justify reallocating the 13 Wireline Competition Bureau FTEs and three Wireless Telecommunications Bureau FTEs as indirect? Or should any such reallocation await the full implementation of these reverse auctions? Alternatively, should some portion of the 38 FTEs that work on non-high-cost programs of the Universal Service Fund not be reallocated as indirect? If so, what portion?

18. Commenters should provide legal and policy reasoning in support or opposition to the proposal and to the alternatives. We note that the Commission has said that it ''would be inconsistent with section 9 to delay reallocating . . . FTEs, where the reallocation is clearly warranted, while we engage in painstaking examinations of less clear and more factually complex situations in other bureaus.''[38] We seek comment on whether reallocation is clearly warranted here, and we ask commenters to address the impact any change in the allocation of FTEs will have on payors in other fee categories as well as the Commission's goal of ensuring that regulatory fees are administrable and sustainable.[39]

2. Reallocating FTEs Associated With Numbering

19. We estimate that 7–8 FTEs in the Wireline Competition Bureau work on numbering issues. We propose to ''adjust[ ]'' the allocation of these direct FTEs ''to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities . . . .''[40] Specifically, we estimate approximately half of the benefit of the work of these FTEs accrue to Wireless Telecommunications Bureau regulatees, who control 44.02 percent of assigned numbers under the North American Numbering Plan[41] and 73.01 percent of voice subscriptions.[42] We therefore propose to reallocate four of the Wireline Competition Bureau FTEs that work on numbering issues to the Wireless Telecommunications Bureau as direct FTEs for regulatory fee purposes. We seek comment on this proposal. We specifically seek comment on whether the statute requires us to impose regulatory fees on the regulatees of a single bureau even though the benefits provided by those FTEs accrue to regulatees of another bureau.

20. Commenters should provide legal and policy reasoning in support or opposition to the proposal, as well as whether the Commission should consider any alternatives. We note that the Commission has said that it ''would

[33] All numbers in this paragraph are for the current fiscal year (starting October 1, 2016) and exclude auction-funded FTEs.

[34] This includes space stations, earth stations, and submarine cable, terrestrial, and satellite international bearer circuits (IBCs).

[35] *See Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

[36] 47 U.S.C. 159(b)(1)(A).

[37] 47 CFR 54.706(a).

[38] *FY 2013 Report and Order,* 28 FCC Rcd at 12357–58, paras. 19 through 20.

[39] *Id.,* 28 FCC Rcd at 12354, para 9.

[40] 47 U.S.C. 159(b)(1)(A).

[41] Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Numbering Resource Utilization in the United States NRUF Data as of June 30, 2010 at 12 Table 1 (2013).

[42] Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Voice Telephone Services: Status as of December 31, 2015 at 2 Figure 1 (2016).

be inconsistent with section 9 to delay reallocating . . . FTEs, where the reallocation is clearly warranted, while we engage in painstaking examinations of less clear and more factually complex situations in other bureaus.'' [43] We seek comment on whether reallocation is clearly warranted here, and we ask commenters to address the impact any change in the allocation of FTEs will have on payors in these two fee categories as well as the Commission's goal of ensuring that regulatory fees are administrable and sustainable.[44]

B. Direct Broadcast Satellite (DBS) Regulatory Fees

21. The proposed fee schedule includes an updated regulatory fee for DBS, a subcategory in the cable television and IPTV category.[45] In 2015, the Commission adopted an initial regulatory fee for DBS, as a subcategory in the cable television and IPTV category, of 12 cents per year per subscriber, or one cent per month.[46] At that time, the Commission committed to updating the regulatory fee rate for FY 2016, as necessary for ensuring an appropriate level of regulatory parity with cable television and IPTV and considering the Media Bureau resources dedicated to this subcategory.[47] Such examination is consistent with a report issued by the Government Accountability Office (GAO) in 2012, which observed it is important for the Commission to ''regularly update analyses to ensure that fees are set based on relevant information.'' [48]

22. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. The two DBS providers, AT&T and DISH Network, are multichannel video programming distributors (MVPDs).[49] When the Commission adopted this regulatory fee subcategory, it recognized numerous recent regulatory developments increased Media Bureau FTE activity involving regulation and oversight of MVPDs, including DBS providers.[50] During the FY 2016 regulatory fee proceeding, commenters representing the cable television industry observed that the Media Bureau FTEs increasingly devote time to issues involving the entire MVPD industry, and that DBS, cable television, and IPTV all receive oversight and regulation as a result of the work of the Media Bureau FTEs on MVPD issues.[51] Recognizing this, in the *FY 2016 Report and Order,* the Commission increased the regulatory fee for DBS providers to 24 cents, plus an across-the-board increase of three cents for the Commission's moving expenses, for a total of 27 cents per subscriber, per year.[52] The increase was adopted in response to the increase in DBS oversight and regulation due to Media Bureau rulemakings regarding MVPD issues.[53] Nevertheless, the FY 2016 fee of 27 cents per subscriber adopted last year, increased from 12 cents, was still significantly below parity with the cable television/IPTV rate of $1.00 per year.[54]

23. Based on our updated analysis of the cable television/IPTV category, we find Media Bureau resources devoted to MVPD proceedings, including DBS,[55] supports revising the DBS regulatory fee rate again. Specifically, we propose a regulatory fee rate of 36 cents per subscriber per year, plus two cents due to the increase in the Commission's budget for moving expenses, for a total of 38 cents per subscriber per year for FY 2017, as set forth in the proposed fee schedule in Table 4. This proposed incremental increase of approximately one cent per subscriber per month would result in bringing the DBS industry regulatory fees closer to those for cable television/IPTV. We seek comment on this proposal.

C. Broadcaster Regulatory Fees

24. In the *FY 2016 NPRM,* the Commission proposed to include a higher population row in the table for AM and FM broadcasters,[56] to standardize the incremental increase in fees,[57] and to better assess fees based on the type and class of service.[58] The Commission also proposed to adjust the television broadcasters table so that Top 10 market stations paid approximately twice what stations in markets 26–50 paid.[59] In response to the *FY 2016 NPRM,* several commenters contended that the proposed regulatory fees were too burdensome for small independent stations.[60] After reviewing the record, including the comments filed by the industry identifying the economic hardship faced by small independent radio stations, the Commission adopted a revised version of the proposed table and reduced the regulatory fees in the two lowest population tiers for AM and FM broadcasters from the rates

[43] *FY 2013 Report and Order,* 28 FCC Rcd at 12357–58, paras. 19 through 20.

[44] *Id.,* 28 FCC Rcd at 12354, para 9.

[45] DBS also pays a regulatory fee per operational station in geostationary orbit.

[46] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015,* Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10276–77, paras. 19 through 20 (2015) (*FY 2015 Report and Order*).

[47] *FY 2015 Report and Order,* 30 FCC Rcd at 10277, para. 20.

[48] GAO Report at 12, available at *http://www.gao.gov/products/GAO-12-686.*

[49] MVPD is defined in section 602(13) of the Act, 47 U.S.C. 522(13).

[50] *FY 2015 NPRM,* 30 FCC Rcd at 5367 through 68, para. 31. *See, e.g., Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Notice of Proposed Rulemaking, 31 FCC Rcd 2463 (2016); *Amendment to the Commission's Rules Concerning Market Modification, Implementation of Section 102 of the STELA Reauthorization Act of 2014,* Report and Order, 30 FCC Rcd 10406 (2015); *Implementation of Section 103 of the STELA Reauthorization Act of 2014,* Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015); *Implementation of the Commercial Advertisement, Loudness Mitigation (CALM) Act,* Report and Order, 26 FCC Rcd 17222 (2011) (*CALM Act Report and Order*).

[51] American Cable Association (ACA) Comments at 3–11 (filed in MD Docket No. 16–166); National Cable & Telecommunications Association (NCTA) Reply Comments at 3–7 (filed in MD Docket No. 16–166).

[52] *FY 2016 Report and Order,* 31 FCC Rcd at 10348 through 49, para. 26.

[53] *Id.,* 31 FCC Rcd at 10348 through 49, para. 26. Commenters representing the cable industry continue to observe that ''[w]hile cable, IPTV, and DBS providers are not regulated identically, they offer similar multichannel video services, participate in the same proceedings at the same level in terms of the number of filings and meetings, and benefit in a similar fashion from Media Bureau regulation of MVPDs.'' *See* Letter from Barbara Esbin, Cinnamon Mueller, attorney for ACA, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 16, 2016) (ACA ex parte) at 1.

[54] The agency is not required to calculate its costs with ''scientific precision.'' *Central & Southern Motor Freight Tariff Ass'n* v. *United States,* 777 F.2d 722, 736 (D.C. Cir. 1985). Reasonable approximations will suffice. *Id.; National Cable Television Ass'n* v. *FCC,* 554 F.2d 1094, 1105 (D.C. Cir. 1976).

[55] *See, e.g., Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices,* Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544 (2016); *Promoting the Availability of Diverse and Independent Sources of Video Programming,* Notice of Inquiry, 31 FCC Rcd 1610 (2016); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees,* Report and Order, 31 FCC Rcd 526 (2016); *Amendment of the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014,* Report and Order, 30 FCC Rcd 10406 (2015).

[56] *FY 2016 NPRM,* 31 FCC Rcd at 5762 through 63, para. 12. The Commission also sought comment on this issue in the Further Notice of Proposed Rulemaking attached to the *FY 2015 Report and Order. See FY 2015 Report and Order,* 30 FCC Rcd at 10280, para. 28.

[57] *Id.* Specifically, the Commission sought comment on standardizing the incremental increase in fees as radio broadcasters increase the population they serve, such as by requiring that fee adjustments between tiers monotonically increase as the population served increases. *Id.*

[58] *Id.*

[59] *FY 2016 NPRM,* 31 FCC Rcd at 5763 through 64, para. 13. The Commission also sought comment on this issue in the Further Notice of Proposed Rulemaking attached to the *FY 2015 Report and Order. See FY 2015 Report and Order,* 30 FCC Rcd at 10280 through 81, para. 29.

[60] *FY 2016 Report and Order,* 31 FCC Rcd at 10351, para. 32.

proposed in the *FY 2016 Report and Order*.[61]

25. We seek comment on further adjusting the regulatory fees for FY 2017. The following chart proposes regulatory fees for AM and FM broadcasters, with revised ratios so that the difference between each tier is proportional. The second chart, for illustrative purposes, has the regulatory fees with the ratios used in the proposal for FY 2016. The second chart does not include the reduction for the two lowest tiers adopted in FY 2016. We seek comment on this proposal. Commenters should also discuss whether the regulatory fees should be reduced further for the AM and FM broadcasters in the two lowest tiers.

TABLE 1—PROPOSED FY 2017 RADIO STATION REGULATORY FEES

Proposed FY 2017 radio station regulatory fees
This uses the proposed ratios for FY 2017

Population served	AM Class A ($)	AM Class B ($)	AM Class C ($)	AM Class D ($)	FM Classes A, B1 & C3 ($)	FM Classes B, C, C0, C1 & C2 ($)
≤25,000	$1,050	$750	$650	$715	$1,150	$1,300
25,001–75,000	1,575	1,125	975	1,075	1,725	1,950
75,001–150,000	2,375	1,700	1,475	1,600	2,600	2,925
150,001–500,000	3,550	2,525	2,200	2,425	3,875	4,400
500,001–1,200,000	5,325	3,800	3,300	3,625	5,825	6,575
1,200,001–3,000,000	7,975	5,700	4,950	5,425	8,750	9,875
3,000,001–6,000,000	11,950	8,550	7,400	8,150	13,100	14,800
>6,000,000	17,950	12,825	11,100	12,225	19,650	22,225

TABLE 2—FY 2017 RADIO STATION REGULATORY FEES BASED ON FY 2016 RATIOS

FY 2017 Radio station regulatory fees, based on proposed FY 2016 fees
This chart uses the proposed ratios in FY 2016

Population served	AM Class A ($)	AM Class B ($)	AM Class C ($)	AM Class D ($)	FM Classes A, B1 & C3 ($)	FM Classes B, C, C0, C1 & C2 ($)
≤25,000	$1,125	$825	$710	$780	$1,250	$1,425
25,001–75,000	1,700	1,250	1,075	1,175	1,875	2,150
75,001–150,000	2,250	1,650	1,425	1,550	2,500	2,850
150,001–500,000	3,375	2,475	2,125	2,350	3,750	4,275
500,001–1,200,000	5,625	4,125	3,550	3,900	6,250	7,125
1,200,001–3,000,000	8,450	6,200	5,325	5,850	9,375	10,700
3,000,001–6,000,000	11,250	8,250	7,100	7,800	12,500	14,250
>6,000,000	14,075	10,325	8,875	9,750	15,625	17,825

D. Broadcast Television Satellites

26. Broadcast television satellite stations pay a lower regulatory fee than standalone, full-service broadcast television stations, and are designated as such pursuant to note 5 to section 73.3555 of the Commission's rules.[62] In 1995, the Commission made a permissive amendment to the regulatory fees schedule to permit television satellite stations that had received authorization to retransmit programming of the primary station to pay a fee separate from the fee for fully operational television stations. This amount is based upon the fee passed by the House of Representatives for television satellite stations for FY 1994.[63] Other full-service television licensees remain subject to the regulatory fee payment required for the class of station and market. Of note, since 1995, we have consistently defined, and thereby limited, a television satellite station as one commonly owned, authorized under note 5 of section 73.3555 of the Commission's rules, and also shown as such in the Television and Cable Factbook. Periodically, the *Television and Cable Factbook* includes information concerning satellite status that is inconsistent with our records.

27. There is a standalone full-service station usually within the same market that serves as the ''parent'' to the satellite station that could not be commonly owned or controlled with the satellite, but for such a waiver. Section 76.55(e)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area (DMA), which reflects viewing patterns, as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.[64] We are

[61] *Id.,* 31 FCC Rcd at 10351, para. 33.

[62] *E.g.,* for FY 2016, satellite television was assessed $1,750, whereas digital broadcast UHF and VHF TV was assessed $5,000 to $60,675, depending on the market size.

[63] *Assessment and Collection of Regulatory Fees for Fiscal Year 1995,* Report and Order, 10 FCC Rcd 13512, 13534–35, para. 60 (1995). *See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year,* Report and Order, 9 FCC Rcd 5333, para. 82 (1994) (''Section 9(g)'s fee schedule establishes specific fees for commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations.'').

[64] 47 CFR 76.55(e)(2); *Assessment and Collection of Regulatory Fees for Fiscal Year 2000,* Report and Order, 15 FCC Rcd 14478, 14492, para. 34 (2000) (*FY 2000 Report and Order*) (''Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the

unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's.[65] In a particular situation, the licensee of a broadcast television satellite station that is not carried by cable, satellite, or alternate methods, may have signal contours that cover the fringes of a DMA (generally, rural communities), whereas other full-service TV stations have greater over-the-air coverage of the DMA market. As a result, advertisers may devote more commercial spending to other full-service TV stations rather than to the more limited broadcast television satellite stations in the same DMA market. Such broadcast television satellite stations may originate their own programming, multicast their broadcasts, and with cable or satellite carriage, provide programming to the entire DMA market. For purposes of paying regulatory fees, the Commission identifies those stations that it deems to be broadcast satellite television stations based on Consolidated Data Base System (CDBS) and other Media Bureau data. However, some stations claim to operate as ''satellites,'' and pay a lower regulatory fee ($1,750 in FY 2016), although they have not been officially granted satellite status by the Commission. Because satellite status may be derived only as a result of Commission action, only stations granted such status by the Commission may pay the satellite television regulatory fee; other stations that claim such status must pay the fee for a full-service station. Attached in Appendix E is a list of the *bona fide* licensed broadcast satellite television stations, according to the Media Bureau records. This list is generated from the Commission's CDBS and other information provided to the Media Bureau. We invite comment on the accuracy of this list.

28. Recognizing that the Commission permitted a lesser fee for television satellite stations, we seek comment on whether we should increase the regulatory fees for broadcast satellite television stations to ensure that all television broadcasters are paying an appropriate regulatory fee based on Media Bureau FTE oversight and regulation. The circumstances that existed in 1994 when the Commission explained that it would permit consideration of a reduced fee in very limited circumstances have changed.[66] As it relates to television satellite stations, should the satellite regulatory fee be increased to a higher percentage of standalone full-service broadcast television stations for ''remaining markets''? In particular, we seek comment on whether the fee for broadcast television satellite stations should be increased to 50 or 75 percent of the regulatory fee for remaining markets for FY 2017 applicable if the station were not a broadcast satellite station, but a full-service standalone broadcast station. Commenters supporting an increase in the broadcast satellite television fee should explain why the fee should be closer to the regular standalone full-service broadcast television fee.

E. International Bearer Circuits

29. Historically, regulatory fees for international bearer circuits (IBCs) have been paid by facilities-based common carriers based on the number of active international bearer circuits they have in a transmission facility used to provide service to specified types of entities—specifically, by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates.[67] In 2009, the Commission revised this methodology by allocating submarine IBC costs among service providers in an equitable and competitively neutral manner, without distinguishing between common carriers and non-common carriers, and assessing a flat per cable landing license fee for all submarine cable systems.[68] It nonetheless declined to simplify terrestrial and satellite IBCs at that time because of the ''complexity of the legal, policy and equity issues involved.'' [69] In the *FY 2016 NPRM,* the Commission revisited the disparate treatment of terrestrial and satellite IBCs vis-à-vis submarine IBCs,[70] but decided in the *FY 2016 Report and Order,* that the record was insufficient to change the fee methodology at that time.[71]

30. The international services marketplace has continued to evolve and we seek comment on how to update and improve our regulatory fee assessment for terrestrial and satellite IBCs to reflect these changes.[72] We seek comment on how to make our fee assessment more efficient, equitable, and less burdensome. In particular, we seek comment on adopting a flat, per-provider fee similar to how we treat submarine cable regulatory fees, with a tiered regulatory fee methodology for terrestrial IBCs based on capacity. Similar to the regulatory fee treatment of submarine cable IBCs, under this

Commission has for determining which market a station serves.''). *See also Amendment to the Commission's Rules Concerning Market Modification,* 30 FCC Rcd 10406, para. 6, n. 19 (2015) (''The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and via MVPD distribution.''); *Designated Market Areas: Report to Congress,* 31 FCC Rcd 5463, 5465 through 66, para. 6 (2015).

[65] *FY 2000 Report and Order,* 15 FCC Rcd 14478, 14492, para. 34 (Commission rejected commenter's ''argu[ment] that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves.'').

[66] *See Implementation of section 9 of the Communications Act and Assessment and Collection of Regulatory Fees of the 1994 Fiscal Year,* Memorandum Opinion and Order, 10 FCC Rcd 12759, 12763, para. 21 (1995) (Applicants considered for relief ''were generally UHF stations . . . lack[ing] network affiliations . . . located outside of the principal city's metropolitan area and do not provide a Grade B signal to a substantial portion of the market's metropolitan areas. Often these stations are not carried by cable systems serving the principal metropolitan areas.''); *Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* Report and Order, 11 FCC Rcd 18774, 18786, para. 32 (1966) (''We . . .rely on Nielsen's DMA market rankings . . . Nielsen data is generally accepted throughout the industry and will be updated and published annually . . . We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.'').

[67] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208, 4211, para. 4 (2009) (*Subcable Order*).

[68] *Subcable Order,* 24 FCC Rcd at 4214–16, paras. 13–17.

[69] *Assessment and Collection of Regulatory Fees for Fiscal Year 2009,* Report and Order, 24 FCC Rcd 10301, 10306 through 07, paras. 16 through 17 (2009).

[70] *FY 2016 NPRM,* 31 FCC Rcd at 5764 through 65, paras. 15 through 16.

[71] *FY 2016 Report and Order,* 31 FCC Rcd at 10343, para. 11.

[72] The Commission has a pending proceeding that seeks comment on the federal need for the international services reporting requirements set forth in section 43.62 of the Commission's rules. *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations,* IB Docket Nos. 16 through 131 and 17 through 55, Notice of Proposed Rulemaking, 32 FCC Rcd 2606 (2017). Relevant to this proceeding, the Commission seeks comment on whether there are ways to further streamline the Circuit Capacity Reports, which require providers of international telecommunications services to file annual reports identifying the submarine cable, satellite, and terrestrial capacity between the United States and foreign points. As noted below, we rely on the reporting requirements for terrestrial, satellite, and submarine cable capacity data to administer the annual regulatory fees established in section 9 of the Act. *See infra* at Appendix C; *see* 47 CFR 43.62(a)(1).

proposal, terrestrial and satellite IBCs would be treated the same regardless of whether they are offered on a common-carrier or non-common-carrier basis. We seek comment on this proposal and how to divide the terrestrial IBCs into categories based on capacity.

31. Level 3 states that non-common carrier terrestrial IBCs should not be exempt from regulatory fees, as it finds the practice to be administratively burdensome, not equitable or competitively neutral, and a disincentive to compliance with the Commission's regulatory fee rules.[73] Level 3, for example, states that it ''spends dozens of person hours each year polling multiple systems to identify international terrestrial facilities in service, generating reports of the circuits that have been sold over those facilities, and identifying whether any of the circuits were sold on a non-common carrier basis.'' [74] Level 3 asserts that the disparate treatment of common carrier and non-common carrier circuits is neither equitable nor competitively neutral as ''[p]roviders that offer international terrestrial service on a common carrier basis are at a significant disadvantage *vis a vis* providers that characterize their service as non-common carrier.'' [75] Level 3 states that ''[c]arriers currently have a strong incentive to characterize circuits as non-common carrier circuits in order to reduce their regulatory fee burden.'' [76] According to Level 3, a flat fee will improve compliance with the Commission's regulatory fee requirements [77] and ''a flat-fee system will remove incentives for providers to not deploy terrestrial IBCs, or to sell international capacity over submarine cable systems instead of terrestrial IBCs.'' [78] We seek comment on these arguments and whether we should harmonize the regulatory treatment of common carrier and non-common carrier terrestrial circuits.

32. We also seek comment on whether we should make changes to the IBC fees for satellite circuits. The number of satellite IBCs are relatively small as compared to terrestrial IBCs.[79] We also note that in addition to being assessed regulatory fees on their common carrier and non-common carrier circuits, earth station, geostationary orbit space station, and non-geostationary orbit space station licensees pay separate regulatory fees for their facilities that are licensed and operational.[80] We seek comment on whether there is a basis to eliminate the IBC regulatory fee for satellite providers of international communications. If we retain the IBC regulatory fees for satellite circuits, should we adopt the methodology discussed herein for assessing the number of active circuits (either only assessing fees on systems active as of December 31 of the prior year, or assessing fees on IBCs that were active at any point during the preceding calendar year)? If we adopt the proposal for a flat-fee methodology, should we apply it to satellite circuits as well as terrestrial circuits? Are there any other steps we should take to harmonize our regulatory fee treatment of terrestrial and satellite IBCs?

33. We also seek comment on whether we should continue to assess regulatory fees based on IBCs that were active as of December 31 of the prior year.[81] Commenters should discuss whether instead we should assess regulatory fees based on IBCs that were active at any point during the preceding calendar year.[82]

34. Finally, we tentatively conclude that adding non-common carrier international bearer circuits to the regulatory fee schedule would be a permitted amendment as defined in section 9(b)(3) of the Act,[83] and pursuant to section 9(b)(4)(B) must be submitted to Congress at least 90 days before it would become effective.[84]

F. Revising the De Minimis Threshold and Eliminating Regulatory Fee Categories

35. Under the Commission's current de minimis rule for regulatory fee payments, a regulatee is exempt from paying regulatory fees if the sum total of all of its regulatory fee liabilities for *annual* regulatory fees is $500 or less for the fiscal year.[85] The Commission increased the de minimis threshold from $10 to $500 in the *FY 2014 Report and Order.*[86] The higher threshold reflected the estimated costs of collecting an unpaid regulatory fee, *i.e.,* at least $350 in direct costs, and the benefits to these entities of a higher de minimis threshold. The Commission's estimate of approximately $350 excluded overhead or other costs involved in regulatory fee collection.[87] In addition, the Commission observed that setting the de minimis threshold at $500 was unlikely to reduce fee collections to an amount below the full amount of the Commission's annual appropriation.[88]

36. In the FY 2014 regulatory fee proceeding, commenters argued the threshold should be increased to $750 or $1,000.[89] For example, ACA suggested that the Commission adopt a threshold of 1000 or fewer subscribers for cable operators and the National Association of Broadcasters (NAB) argued that the Commission should adopt a de minimis threshold of $750 or $1,000 in order to provide relief for smaller entities.[90] These commenters explained that a higher de minimis threshold may contribute to the difference between a small operator staying in business or closing operations.[91] NAB also observed that a higher de minimis threshold would allow stations in smaller markets to devote more resources to improved programming and signal quality.[92] The Commission adopted a new threshold of $500 for annual regulatory fee and committed to further monitor the de minimis threshold and consider whether to increase the threshold or revise on some other basis.[93]

37. Consistent with this commitment, we seek comment on increasing the de minimis threshold to $1,000 to improve the cost effectiveness of the Commission's collection of regulatory fees and to provide regulatory fee relief to smaller entities, particularly those that have little Commission regulation or oversight.[94] As we explained in the

[73] Level 3 Comments, MD Docket No. 16–166, at 5.

[74] *Id.* at 5.

[75] *Id.* at 6 (stating that ''the fact that non-common carrier circuits are 'unregulated' is not relevant to the Commission's authority to collect regulatory fees on those circuits. All terrestrial IBCs are 'telecommunications' subject to the Commissions' jurisdiction, and benefit from the Commissions' 'international activities,' including cross-border coordination with Canada and Mexico'').

[76] *Id.* at 5.

[77] *Id.* at 5.

[78] *Id.* at 4.

[79] For example, for data as of December 31, 2014, there were a total of 21,911,703 circuit units (64 kbps) with terrestrial circuits accounting for 99.63 percent (21,830,546) while satellite accounted for only 0.37 percent (81,157). FCC, International Bureau, 2014 U.S. International Circuit Capacity Report at 3 (IB 2016), *https://apps.fcc.gov/edocs_public/attachmatch/DOC-337257A2.pdf.*

[80] *See infra* para. 39; *FY 2016 Report and Order,* 31 FCC Rcd at 10356, para. 42.

[81] 47 CFR 43.62(a)(1); *see infra* at para. 30.

[82] We recognize that this could require modification of section 43.62(a)(1) of our rules and any successor rules. 47 CFR 43.62(a)(1).

[83] 47 U.S.C. 159(b)(3).

[84] 47 U.S.C. 159(b)(4)(B).

[85] *FY 2014 Report and Order,* 29 FCC Rcd at 10774–76, paras. 18 through 21.

[86] *Id.*

[87] *Id.,* 29 FCC Rcd at 10775, para. 20 & n. 62.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.,* 29 FCC Rcd at 10774 through 75, para. 19.

[92] *Id.*

[93] *Id.,* 29 FCC Rcd at 10775, para. 20.

[94] *Id.* (observing that many small entities ''are subject to little Commission oversight and regulation which serves to further exacerbate this inequity [of the administrative burden].'').

FY 2014 Report and Order, smaller entities with limited funds are less likely to be able to budget for regulatory fees on a timely basis and therefore may incur late fees and consequently use more Commission resources for fee collection.[95] The administrative burden on small regulatees, and the Commission's operational costs associated with processing and collecting these smaller fees, likely outweigh the benefits of such payments. For example, payors between $500 and $1,000 account for less than one percent of all regulatory fee payments. In addition, the cost of researching, creating, and sending a bill to a non-payer, and completing all follow-up discussion and correspondence, totals more than $350. Added to this cost is the overhead and the costs of administering the regulatory fee program.[96] We seek comment on whether it makes sense to incur upwards of $350 in administrative costs to collect not even that much in regulatory fees that can offset the costs fees paid by other regulatees (as is the case for regulatees that owe $501 to $700). We seek comment on whether a $1,000 threshold is high enough to ensure that the regulatory fees collected from any regulatee substantially exceed the costs of collection. We invite comment whether the cost of collections and burden on small entities outweigh the associated regulatory fee payments.

38. We also seek comment on whether we should include multi-year wireless licenses in the de minimis threshold. If we adopt a de minimis threshold for multi-year wireless licensees, should the threshold be fee-based, or should it be determined by the number of licenses, frequencies, or paths the licensee holds? We recognize that some entities hold many multi-year licenses and the licenses can be renewed at different times of the year. Commenters should discuss whether including multi-year licenses in the de minimis threshold would be too administratively burdensome. We also seek comment on whether we should adopt a de minimis threshold based on number of cable television subscribers, as suggested by ACA.[97]

39. In addition, we seek comment on eliminating regulatory fee categories, such as CMRS Messaging (Paging).[98] This category accounts for a very small amount of regulatory fees; we seek comment on the benefits of discontinuing such collections. Commenters should discuss other changes to the regulatory fee framework that would facilitate the goal of ensuring that regulatory fees are administrable and sustainable. For example, are there categories of regulatory fee payors that now have very little Commission oversight or regulation, apart from the application fee process? We seek comment on whether there are regulatory fees adopted for some categories in the past where now there is a clear case to conclude that the fee is no longer ''reasonably related to the benefits provided to the payer of the fee by the Commission's activities . . . .'' [99]

40. We tentatively conclude that eliminating categories from our regulatory fee schedule would be a permitted amendment as defined in section 9(b)(3) of the Act,[100] and pursuant to section 9(b)(4)(B) must be submitted to Congress at least 90 days before it would become effective.[101]

G. Other Reforms

41. We also seek comment on ways to further improve our regulatory fee process to make it less burdensome for all entities. In particular, we seek comment on ways we can communicate better with smaller regulatees, such as mass emails (instead of through the U.S. Postal Service), and if we should therefore require a current email address for all regulatory fee payors.

V. Procedural Matters

A. Payment of Regulatory Fees

1. Checks Will Not Be Accepted for Payment of Annual Regulatory Fees

42. Pursuant to an Office of Management and Budget (OMB) directive,[102] the Commission is moving towards a paperless environment, extending to disbursement and collection of select federal government payments and receipts.[103] In 2015, the Commission stopped accepting checks (including cashier's checks and money orders) and the accompanying hardcopy forms (*e.g.,* Forms 159, 159–B, 159–E, 159–W) for the payment of regulatory fees.[104] All regulatory fee payments must be made by online Automated Clearing House (ACH) payment, online credit card, or wire transfer. Any other form of payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, a Form 159–E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information.

2. Credit Card Transaction Levels

43. Since June 1, 2015, in accordance with U.S. Treasury Announcement No. A–2014–04 (July 2014), the amount that can be charged on a credit card for transactions with federal agencies has is $24,999.99.[105] Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in Fee Filer. Further details will be provided regarding payment methods and procedures at the time of FY 2017 regulatory fee collection in *Fact Sheets,* available at *https://www.fcc.gov/regfees.*

3. De Minimis Regulatory Fees

44. Under the Commission's present de minimis rule for regulatory fee

[95] *Id.*

[96] *Id.*

[97] ACA observes that ''exempting cable/IPTV providers serving fewer than 1,000 subscribers from the Cable/IPTV fee category would be consistent with other exemptions the Commission has created for these operators, and would serve similar purposes.'' ACA ex parte at 4. ACA suggests a progressive fee structure, with the level of rates gradually increasing based on the number of subscribers. *Id.* at 5 through 6.

[98] The Commission has sought comment on this issue previously. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* Notice of Proposed Rulemaking, 29 FCC Rcd 6417, 6429, para. 32 (2014) (*FY 2014 NPRM*).

[99] 47 U.S.C. 159(b)(1)(A). We note, however, that the Communications Act provides for ''waiver, reduction, and deferment'' of a regulatory fee in any specific instance for good cause shown, where such action would promote the public interest. As a result, commenters should not focus suggestions on the merits of individual regulatory fee payors but rather improvements to the system that are consistent with Congressional directive contained in section 9 of the Communications Act.

[100] 47 U.S.C. 159(b)(3).

[101] 47 U.S.C. 159(b)(4)(B).

[102] Office of Management and Budget (OMB) Memorandum M–10–06, Open Government Directive, Dec. 8, 2009; *see also http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov.*

[103] *See* U.S. Department of the Treasury, Open Government Plan 2.1, September 2012.

[104] *FY 2015 Report and Order,* 30 FCC Rcd at 10282 through 83, para. 35. *See* 47 CFR 1.1158.

[105] Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and Fiscal Service rules. An amount owed that exceeds the Fiscal Service maximum dollar amount, $24,999.99, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the Fiscal Service maximum dollar amount may not be split into two or more transactions over multiple days by using one or more cards.

payments, a regulatee is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is $500 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees (not regulatory fees paid through multi-year filings), and it is not a permanent exemption. Each regulatee will need to reevaluate the total annual fee liability each fiscal year to determine whether they meet the de minimis exemption. This de minimis threshold could change as a result of this *Notice of Proposed Rulemaking.*

4. Standard Fee Calculations and Payment Dates

45. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

• *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2016 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2016.

• *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.[106] For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in section 52.103 of the Commission's rules.[107] The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2016.

• *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2016. The number of subscribers, units, or telephone numbers on December 31, 2016 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *Wireless Services, Multi-year fees:* The first eight regulatory fee categories in our Schedule of Regulatory Fees pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2017.

• *Multichannel Video Programming Distributor Services (cable television operators, CARS licensees, DBS,* and *IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2016.[108] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of Direct Broadcast Satellite (DBS) service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for (1) earth stations and (2) geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2016. In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: (Submarine Cable Systems):* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2016. In instances where a license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2017 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services:* (*Terrestrial and Satellite Services*): Regulatory fees for Terrestrial and Satellite IBCs are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2016 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, the facilities-based common carriers must include circuits used by themselves or their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit they and their affiliates hold and each circuit sold or leased to any customer, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. For these purposes, ''active circuits'' include backup and redundant circuits as of December 31, 2016. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits.[109] In instances where a permit or license is transferred or assigned after October 1, 2016, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2017 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.[110]

B. Commercial Mobile Radio Service (CMRS) and Mobile Services Assessments

46. The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[111] This

[106] Audio bridging services are toll teleconferencing services.

[107] 47 CFR 52.103.

[108] Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. **Note:** Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2016, rather than on a count as of December 31, 2016.

[109] We encourage terrestrial and satellite service providers to seek guidance from the International Bureau's Telecommunications and Analysis Division to verify their particular IBC reporting processes to ensure that their calculation methods comply with our rules.

[110] We remind facilities-based common carriers to review their reporting processes to ensure that they accurately calculate and report IBCs.

[111] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005,* Report and Order and

information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system (Fee Filer) along with the carrier's Operating Company Numbers (OCNs).

47. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation.[112] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

48. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.,* compute their telephone number counts as of December 31, 2016), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

VI. Additional Tables

TABLE 3—CALCULATION OF FY 2017 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees in the first seven fee categories are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee Category	FY 2017 Payment units	Years	FY 2016 Revenue estimate	Pro-Rated FY 2017 Revenue requirement	Computed FY 2017 Regulatory fee	Rounded FY 2017 reg. fee	Expected FY 2017 revenue
PLMRS (Exclusive Use)	1,300	10	625,000	326,950	25	25	325,000
PLMRS (Shared use)	16,000	10	3,110,000	1,609,600	10	10	1,600,000
Microwave	11,800	10	3,125,000	2,967,700	25	25	2,950,000
Marine (Ship)	8,100	10	1,035,000	1,222,290	15	15	1,215,000
Aviation (Aircraft)	4,200	10	470,000	422,520	10	10	420,000
Marine (Coast)	150	10	192,500	60,360	40	40	60,000
Aviation (Ground)	1,100	10	220,000	221,329	20	20	220,000
AM Class A[4]	65	1	313,500	307,333	4,728	4,725	307,125
AM Class B[4]	1,523	1	3,875,875	3,830,345	2,515	2,525	3,845,575
AM Class C[4]	870	1	1,400,175	1,356,591	1,559	1,550	1,348,500
AM Class D[4]	1,492	1	4,587,900	4,502,856	3,018	3,025	4,513,300
FM Classes A, B1 & C3[4]	3,150	1	9,678,200	9,427,478	2,993	3,000	9,450,000
FM Classes B, C, C0, C1 & C2[4]	3,114	1	11,849,725	11,590,931	3,722	3,725	11,599,650
AM Construction Permits[1]	10	1	9,300	6,500	650	650	6,500
FM Construction Permits[1]	113	1	192,425	129,950	1,150	1,150	129,950
Satellite TV	126	1	224,000	218,654	1,735	1,725	217,350
Digital TV Markets 1–10	139	1	8,433,825	8,355,082	60,109	60,100	8,353,900
Digital TV Markets 11–25	131	1	6,348,825	5,933,665	45,295	45,300	5,934,300
Digital TV Markets 26–50	181	1	5,525,025	5,471,684	30,230	30,225	5,470,725
Digital TV Markets 51–100	285	1	4,301,600	4,314,986	15,140	15,150	4,317,750
Digital TV Remaining Markets	367	1	1,825,000	1,818,320	4,955	4,950	1,816,650
Digital TV Construction Permits[1]	3	1	15,000	14,864	4,955	4,950	14,850
LPTV/Translators/Boosters/Class A TV	4,051	1	1,785,420	1,752,382	433	435	1,762,185
CARS Stations	230	1	220,875	216,340	941	940	216,200
Cable TV Systems, including IPTV	62,000,000	1	64,200,000	59,253,400	.9557	.96	59,520,000
Direct Broadcast Satellite (DBS)	32,500,000	1	9,180,000	12,424,100	.38	.38	12,350,000
Interstate Telecommunication Service Providers	37,300,000,000	1	142,722,000	112,571,400	0.003018	0.00302	112,646,000
Toll Free Numbers	32,700,000	1	4,745,000	3,947,544	0.1207	0.12	3,924,000

Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38 through 44 (2005).

[112] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

TABLE 3—CALCULATION OF FY 2017 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees in the first seven fee categories are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee Category	FY 2017 Payment units	Years	FY 2016 Revenue estimate	Pro-Rated FY 2017 Revenue requirement	Computed FY 2017 Regulatory fee	Rounded FY 2017 reg. fee	Expected FY 2017 revenue
CMRS Mobile Services (Cellular/Public Mobile)	385,000,000	1	73,200,000	81,336,108	0.211	0.21	80,850,000
CMRS Messag. Services	2,100,000	1	184,000	168,000	0.0800	0.080	168,000
BRS [2]							
LMDS	870	1	645,250	561,398	805	805	700,350
	395	1	286,375	456,976	805	805	317,975
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	26,500,000	1	638,000	791,219	.0299	.03	795,000
Submarine Cable Providers (see chart in Appendix C) [3]	41.19	1	5,486,242	5,589,583	135,709	135,700	5,589,212
Earth Stations	3,400	1	1,173,000	1,228,896	361	360	1,224,000
Space Stations (Geostationary)	95	1	13,155,125	13,725,182	144,476	144,475	13,725,125
Space Stations (Non-Geostationary)	6	1	911,700	951,190	158,532	158,525	951,150
****** Total Estimated Revenue to be Collected			384,890,362	359,083,693			358,855,322
****** Total Revenue Requirement			384,012,497	356,710,992			356,710,992
Difference			877,865	2,372,701			2,144,330

Notes on Table 3

[1] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Table 4 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009).

[4] The fee amounts listed in the column entitled ''Rounded New FY 2017 Regulatory Fee'' constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2017 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 4.

TABLE 4—PROPOSED REGULATORY FEES

Regulatory fees in the first eight fee categories are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.21
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	805
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	805
AM Radio Construction Permits	650
FM Radio Construction Permits	1,150
Digital TV (47 CFR part 73) VHF and UHF Commercial	
Markets 1–10	60,100

TABLE 4—PROPOSED REGULATORY FEES—Continued

Regulatory fees in the first eight fee categories are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee category	Annual regulatory fee (U.S. $'s)
Markets 11–25	45,300
Markets 26–50	30,225
Markets 51–100	15,150
Remaining Markets	4,950
Construction Permits	4,950
Satellite Television Stations (All Markets)	1,725
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	435
CARS (47 CFR part 78)	940
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	.96
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.38
Interstate Telecommunication Service Providers (per revenue dollar)	.00302
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.12
Earth Stations (47 CFR part 25)	360
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	144,475
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	158,525
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.03
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2017 RADIO STATION REGULATORY FEES

Population served	AM Class A ($)	AM Class B ($)	AM Class C ($)	AM Class D ($)	FM Classes A, B1 & C3 ($)	FM Classes B, C, C0, C1 & C2 ($)
<=25,000	1,050	750	650	715	1,150	1,300
25,001–75,000	1,575	1,125	975	1,075	1,725	1,950
75,001–150,000	2,375	1,700	1,475	1,600	2,600	2,925
150,001–500,000	3,550	2,525	2,200	2,425	3,875	4,400
500,001–1,200,000	5,325	3,800	3,300	3,625	5,825	6,575
1,200,001–3,000,00	7,975	5,700	4,950	5,425	8,750	9,875
3,000,001–6,000,00	11,950	8,550	7,400	8,150	13,100	14,800
>6,000,000	17,950	12,825	11,100	12,225	19,650	22,225

INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

Submarine cable systems (capacity as of December 31, 2016)	Fee amount ($)
<2.5 Gbps	8,475
2.5 Gbps or greater, but less than 5 Gbps	16,975
5 Gbps or greater, but less than 10 Gbps	33,925
10 Gbps or greater, but less than 20 Gbps	67,850
20 Gbps or greater	135,700

Sources of Payment Unit Estimates for FY 2017

In order to calculate individual service fees for FY 2017, we adjusted FY 2016 payment units for each service to more accurately reflect expected FY 2017 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2017 estimates with actual FY 2016 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2017 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2017 payment units are based on FY 2016 actual payment units, it does not necessarily mean that our FY 2017 projection is exactly the same number as in FY 2016. We have either rounded the FY 2017 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.

Fee category	Sources of payment unit estimates
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 16 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 16 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2016 payment units.
BRS (formerly MDS/MMDS) LMDS	Based on WTB reports and actual FY 2016 payment units. Based on WTB reports and actual FY 2016 payment units.
Cable Television Relay Service (CARS) Stations.	Based on data from Media Bureau's COALS database and actual FY 2016 payment units.
Cable Television System Subscribers, Including IPTV Subscribers.	Based on publicly available data sources for estimated subscriber counts and actual FY 2016 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2016, the Wireline Competition Bureau projected the amount of calendar year 2016 revenue that will be reported on 2017 FCC Form 499–A worksheets due in April, 2017.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2016 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2016 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees, adjusted as necessary.
Submarine Cable Licenses	Based on IB license information.

TABLE 6—FACTORS, MEASUREMENTS, AND CALCULATIONS THAT DETERMINE STATION SIGNAL CONTOURS AND ASSOCIATED POPULATION COVERAGES

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 7—LIST OF THE LICENSED SATELLITE TELEVISION STATIONS BASED ON COMMISSION RECORDS

[all markets]

FCC_ID	Call sign	TV market	Licensee as of September 28, 2016
11912	KAAS–TV	Wichita-Hutchinson, KS	KSAS LICENSEE, LLC
48659	KABY–TV	Sioux Falls-Mitchell, SD	GRAY TELEVISION LICENSEE, LLC
4145	KAII–TV	Honolulu, HI	LIN LICENSE COMPANY, LLC
13813	KATN	Fairbanks, AK	VISION ALASKA II LLC
48556	KBIM–TV	Albuquerque-Santa Fe, NM	LIN OF NEW MEXICO, LLC
55370	KBRR	Fargo-Valley City, ND	RED RIVER BROADCAST CO., LLC
66414	KBSD–DT	Wichita-Hutchinson, KS	GRAY TELEVISION LICENSEE, LLC
66415	KBSH–DT	Wichita-Hutchinson, KS	GRAY TELEVISION LICENSEE, LLC
66416	KBSL-DT	Wichita-Hutchinson, KS	GRAY TELEVISION LICENSEE, LLC
6669	KBTX–TV	Waco-Temple-Bryan, TX	GRAY TELEVISION LICENSEE, LLC
35909	KBVO	Austin, TX	KXAN LLC
49750	KCBY–TV	Eugene, OR	SINCLAIR EUGENE LICENSEE, LLC
9632	KCCO–TV	Minneapolis-St. Paul, MN	CBS BROADCASTING INC.
9640	KCCW–TV	Minneapolis-St. Paul, MN	CBS BROADCASTING INC.
18079	KCFW–TV	Missoula, MT	BLUESTONE LICENSE HOLDINGS INC.
41969	KCLO–TV	Rapid City, SD	YOUNG BROADCASTING OF RAPID CITY, INC.

TABLE 7—LIST OF THE LICENSED SATELLITE TELEVISION STATIONS BASED ON COMMISSION RECORDS—Continued

[all markets]

FCC_ID	Call sign	TV market	Licensee as of September 28, 2016
60740	KDKF	Medford-Klamath Falls, OR	OREGON TV LICENSE COMPANY LLC
41975	KDLO–TV	Sioux Falls-Mitchell, SD	YOUNG BROADCASTING OF SIOUX FALLS, INC.
55375	KDLV–TV	Sioux Falls-Mitchell, SD	RED RIVER BROADCAST CO., LLC
56029	KEPR–TV	Yakima-Pasco-Richland-Kennewick, WA.	SINCLAIR YAKIMA LICENSEE, LLC
125	KFCT	Denver, CO	TRIBUNE BROADCASTING DENVER LICENSE
21613	KFNE	Casper-Riverton, WY	WYOMEDIA CORPORATION
21612	KFNR	Casper-Riverton, WY	WYOMEDIA CORPORATION
83714	KFTC	Minneapolis-St. Paul, MN	FOX TELEVISION STATIONS, LLC
7894	KGIN	Lincoln-Hastings-Kearney, NE	GRAY TELEVISION LICENSEE, LLC
36914	KGMD–TV	Honolulu, HI	HITV LICENSE SUBSIDIARY, INC.
36920	KGMV	Honolulu, HI	HITV LICENSE SUBSIDIARY, INC.
63162	KGWL–TV	Casper-Riverton, WY	MARK III MEDIA, INC.
63170	KGWR–TV	Casper-Riverton, WY	MARK III MEDIA, INC.
4146	KHAW–TV	Honolulu, HI	LIN LICENSE COMPANY, LLC
34846	KHBC–TV	Honolulu, HI	KHNL/KGMB LICENSE SUBSIDIARY, LLC
60354	KHOG–TV	Ft. Smith-Fayetteville-Springdale-Rogers, AR.	KHBS HEARST TELEVISION INC.
34348	KHSD–TV	Rapid City, SD	GRAY TELEVISION LICENSEE, LLC
64544	KHVO	Honolulu, HI	KITV, INC.
55364	KJRR	Fargo-Valley City, ND	RED RIVER BROADCAST CO., LLC
1283	KJWP	Philadelphia, PA	PMCM TV, LLC
65523	KLBY	Wichita-Hutchinson, KS	KNOXVILLE TV LLC
664	KLEI–TV	Honolulu, HI	MAUNA KEA BROADCASTING COMPANY, INC.
56032	KLEW–TV	Spokane, WA	SINCLAIR LEWISTON LICENSEE, LLC
64551	KMAU	Honolulu, HI	KITV, INC.
35183	KMCB	Eugene, OR	KMTR TELEVISION, LLC
22127	KMCY	Minot-Bismarck-Dickinson, ND	KBMY–KMCY, LLC
41425	KMOT	Minot-Bismarck-Dickinson, ND	GRAY TELEVISION LICENSEE, LLC
82615	KNDM	Minot-Bismarck-Dickinson, ND	LEGACY BROADCASTING, LLC
12427	KNDU	Yakima-Pasco-Richland-Kennewick, WA.	KHQ, INCORPORATED
17683	KNEP	Cheyenne, WY-Scottsbluff, NE	GRAY TELEVISION LICENSEE, LLC
55362	KNRR	Fargo-Valley City, ND	RED RIVER BROADCAST CO., LLC
29557	KNWA–TV	Ft. Smith-Fayetteville -Springdale-Rogers, AR.	NEXSTAR BROADCASTING, INC.
35321	KOBF	Albuquerque-Santa Fe, NM	KOB–TV, LLC
62272	KOBR	Albuquerque-Santa Fe, NM	KOB–TV, LLC
83181	KOCW	Wichita-Hutchinson, KS	KSAS LICENSEE, LLC
34859	KOGG	Honolulu, HI	KHNL/KGMB LICENSE SUBSIDIARY, LLC
8284	KOTI	Medford-Klamath Falls, OR	CALIFORNIA OREGON BROADCASTING, INC.
61551	KPIC	Eugene, OR	SOUTH WEST OREGON TV BROAD. CORP.
41964	KPLO–TV	Sioux Falls-Mitchell, SD	YOUNG BROADCASTING OF SIOUX FALLS, INC.
73998	KPOB–TV	Paducah-Cape Girardeau-Harrisburg-Mt Vernon.	WSIL–TV, INC.
48660	KPRY–TV	Sioux Falls-Mitchell, SD	GRAY TELEVISION LICENSEE, LLC
41430	KQCD–TV	Minot-Bismarck-Dickinson, ND	GRAY TELEVISION LICENSEE, LLC
17686	KQME	Rapid City, SD	LEGACY BROADCASTING OF RAPID CITY LLC
70578	KREG–TV	Denver, CO	NEXSTAR BROADCASTING, INC.
70579	KREY–TV	Grand Junction-Montrose, CO	NEXSTAR BROADCASTING, INC.
48589	KREZ–TV	Albuquerque-Santa Fe, NM	LIN OF COLORADO, LLC
82698	KRII	Duluth, MN-Superior, WI	KBJR LICENSE, LLC
82613	KRTN–TV	Albuquerque-Santa Fe, NM	RAMAR COMMUNICATIONS, INC.
84157	KRWB–TV	Albuquerque-Santa Fe, NM	KASY–TV LICENSEE LLC
35585	KRWF	Minneapolis-St. Paul, MN	KSAX–TV, INC.
307	KSAN–TV	San Angelo, TX	MISSION BROADCASTING, INC.
35584	KSAX	Minneapolis-St. Paul, MN	KSAX–TV, INC.
17680	KSGW–TV	Rapid City, SD	GRAY TELEVISION LICENSEE, LLC
72359	KSNC	Wichita-Hutchinson, KS	LIN LICENSE COMPANY, LLC
72361	KSNG	Wichita-Hutchinson, KS	LIN LICENSE COMPANY, LLC
72362	KSNK	Wichita-Hutchinson, KS	LIN LICENSE COMPANY, LLC
63182	KSTF	Cheyenne, WY-Scottsbluff, NE	GRAY TELEVISION LICENSEE, LLC
35187	KTCW	Eugene, OR	KMTR TELEVISION, LLC
68541	KTRE	Tyler-Longview, TX	KLTV/KTRE LICENSE SUBSIDIARY, LLC
28501	KTTM	Sioux Falls-Mitchell, SD	INDEPENDENT COMMUNICATIONS, INC.
18066	KTVM–TV	Butte-Bozeman, MT	BLUESTONE LICENSE HOLDINGS INC.
41429	KUMV–TV	Minot-Bismarck-Dickinson, ND	GRAY TELEVISION LICENSEE, LLC
65535	KUPK	Wichita-Hutchinson, KS	KNOXVILLE TV LLC
2495	KVEW	Yakima-Pasco-Richland-Kennewick, WA.	APPLE VALLEY BROADCASTING, INC.
40450	KVIH–TV	Amarillo, TX	KVII LICENSEE, LLC

TABLE 7—LIST OF THE LICENSED SATELLITE TELEVISION STATIONS BASED ON COMMISSION RECORDS—Continued

[all markets]

FCC_ID	Call sign	TV market	Licensee as of September 28, 2016
33078	KVTV	Laredo, TX	EAGLE CREEK BROADCASTING OF LAREDO
42008	KWAB–TV	Odessa-Midland, TX	KWES LICENSE SUBSIDIARY, LLC
21162	KWNB–TV	Lincoln-Hastings-Kearney, NE	KHGI LICENSEE, LLC
55684	KXMA–TV	Minot-Bismarck-Dickinson, ND	NEXSTAR BROADCASTING, INC.
55686	KXMB–TV	Minot-Bismarck-Dickinson, ND	NEXSTAR BROADCASTING, INC.
55683	KXMD–TV	Minot-Bismarck-Dickinson, ND	NEXSTAR BROADCASTING, INC.
60384	KYLE–TV	Waco-Temple-Bryan, TX	NEXSTAR BROADCASTING, INC.
5237	KYUS–TV	Billings, MT	KYUS–TV BROADCASTING CORPORATION
76001	WBKP	Marquette, MI	LAKE SUPERIOR COMMUNITY BROAD. CORP.
69544	WCCU	Champaign-Springfield-Decatur, IL.	GOCOM MEDIA OF ILLINOIS, LLC
74419	WCDC–TV	Albany-Schenectady-Troy, NY	YOUNG BROADCASTING OF ALBANY, INC.
42116	WCIX	Champaign-Springfield-Decatur, IL.	NEXSTAR BROADCASTING, INC.
22124	WDAZ–TV	Fargo-Valley City, ND	FORUM COMMUNICATIONS COMPANY
71325	WDBB	Birmingham, AL	WDBB–TV, INC.
6476	WDPX–TV	Boston, MA	ION MEDIA BOSTON LICENSE, INC.
2709	WEUX	La Crosse-Eau Claire, WI	NEXSTAR BROADCASTING, INC.
60553	WFTY–DT	New York, NY	UNIVISION NEW YORK LLC
25395	WFUP	Traverse City-Cadillac, MI	CADILLAC TELECASTING CO.
59279	WGTQ	Traverse City-Cadillac, MI	TRAVERSE CITY (WGTU–TV) LICENSEE, INC.
48668	WHLT	Hattiesburg-Laurel, MS	MEDIA GENERAL COMMUNICATIONS HOLDINGS
25684	WICD	Champaign-Springfield-Decatur, IL.	WICD LICENSEE, LLC
39887	WIRS	San Juan, PR	AMERICA–CV STATION GROUP, INC.
71336	WIRT–DT	Duluth, MN-Superior, WI	WDIO–TV, LLC
68519	WJKT	Jackson, TN	NEXSTAR BROADCASTING, INC.
86537	WJLP	New York, NY	PMCM TV, LLC
9630	WJMN–TV	Marquette, MI	NEXSTAR BROADCASTING, INC.
58342	WJWN–TV	San Juan, PR	AMERICA–CV STATION GROUP, INC.
58341	WKPV	San Juan, PR	AMERICA–CV STATION GROUP, INC.
73336	WNJX–TV	San Juan, PR	TELEVICENTRO OF PUERTO RICO, LLC
73344	WNNE	Burlington, VT-Plattsburgh, NY	HEARST STATIONS INC.
16539	WNTZ–TV	Alexandria, LA	NEXSTAR BROADCASTING, INC.
64865	WORA–TV	San Juan, PR	TELECINCO, INC.
48406	WPXG–TV	Boston, MA	ION MEDIA BOSTON LICENSE, INC.
37971	WPXU–TV	Greenville-New Bern -Washington, NC.	ION MEDIA JACKSONVILLE LICENSE, INC.
64550	WQOW	La Crosse-Eau Claire, WI	WXOW–WQOW LICENSE, LLC
19776	WSUR–DT	San Juan, PR	WLII/WSUR LICENSE PARTNERSHIP, G.P.
26681	WTIN–TV	San Juan, PR	TELEVICENTRO OF PUERTO RICO, LLC
21254	WTOM–TV	Traverse City-Cadillac, MI	WPBN LICENSEE, LLC
56526	WTTK	Indianapolis, IN	TRIBUNE BROADCASTING INDIANAPOLIS, LLC
61573	WVEO	San Juan, PR	SPANISH BROAD. SYSTEM HOLDING CO.
24812	WWCW	Roanoke-Lynchburg, VA	NEXSTAR BROADCASTING, INC.
23264	WWPX–TV	Washington, DC	ION MEDIA MARTINSBURG LICENSE, INC.
26993	WWUP–TV	Traverse City-Cadillac, MI	HERITAGE BROAD. COMPANY OF MICHIGAN
35582	WYDO	Greenville-New Bern -Washington, NC.	ESTEEM BROADCASTING OF NORTH CAROLINA
77789	WYOW	Wausau-Rhinelander, WI	WAOW–WYOW LICENSE, LLC
83270	WZVI	Virgin Islands	ALPHA BROADCASTING CORPORATION

TABLE 8—FY 2016 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee Category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.20
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08

TABLE 8—FY 2016 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee Category	Annual regulatory fee (U.S. $s)
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	725
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	725
AM Radio Construction Permits	620
FM Radio Construction Permits	1,075
Digital TV (47 CFR part 73) VHF and UHF Commercial:	
Markets 1–10	60,675
Markets 11–25	45,675
Markets 26–50	30,525
Markets 51–100	15,200
Remaining Markets	5,000
Construction Permits	5,000
Satellite Television Stations (All Markets)	1,750
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	455
CARS (47 CFR part 78)	775
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV	1.00
Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act)	.27
Interstate Telecommunication Service Providers (per revenue dollar)	.00371
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.13
Earth Stations (47 CFR part 25)	345
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	138,475
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	151,950
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.02
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2016 SCHEDULE OF REGULATORY FEES: (CONTINUED)

[FY 2016 Radio Station Regulatory Fees]

Population served	AM Class A ($)	AM Class B ($)	AM Class C ($)	AM Class D ($)	FM Classes A, B1 & C3 ($)	FM Classes B, C, C0, C1 & C2 ($)
<=25,000	990	715	620	685	1,075	1,250
25,001–75,000	1,475	1,075	925	1,025	1,625	1,850
75,001–150,000	2,200	1,600	1,375	1,525	2,400	2,750
150,001–500,000	3,300	2,375	2,075	2,275	3,600	4,125
500,001–1,200,000	5,500	3,975	3,450	3,800	6,000	6,875
1,200,001–3,000,000	8,250	5,950	5,175	5,700	9,000	10,300
3,000,001–6,000,000	11,000	7,950	6,900	7,600	12,000	13,750
>6,000,000	13,750	9,950	8,625	9,500	15,000	17,175

FY 2016 SCHEDULE OF REGULATORY FEES (CONTINUED)

[International Bearer Circuits—Submarine Cable]

Submarine Cable Systems (capacity as of December 31, 2015)	Fee amount
< 2.5 Gbps	$8,325
2.5 Gbps or greater, but less than 5 Gbps	16,650
5 Gbps or greater, but less than 10 Gbps	33,300
10 Gbps or greater, but less than 20 Gbps	66,600
20 Gbps or greater	133,200

VII. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[113] the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM).* Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *NPRM.* The Commission will send a copy of the *NPRM,* including the IRFA, to the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[114]

[113] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[114] *Id.*

A. Need for, and Objectives of, the Notice

2. This *NPRM* seeks comment regarding adopting proposed regulatory fees for Fiscal Year 2017. The proposed regulatory fees are attached to the *NPRM* in Table 4. This regulatory fee *NPRM* is needed each year because the Commission is required by Congress to adopt regulatory fees each year ''to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.'' [115] The objective of this *NPRM* is to propose regulatory fees for fiscal year 2017 and adopt regulatory fee reform to improve the regulatory fee process. This *NPRM* seeks comment on the following

[115] 47 U.S.C. 159(a).

proposals. (i) The *NPRM* proposes an increase in the DBS fee rate to 38 cents per DBS subscriber so that the DBS fee would be approaching parity with the cable television/IPTV fee, based on the Media Bureau FTEs devoted to issues that include DBS. (ii) The *NPRM* seeks comment on revising rates for AM and FM broadcasters and further reducing rates for those broadcasters in smaller markets. (iii) The *NPRM* seeks comment on correctly identifying satellite television operators and ensuring that they pay the regulatory fee associated with satellite television. (iv) The *NPRM* seeks comment on adopting a new methodology for determining terrestrial international bearer circuit regulatory fees. (v) The *NPRM* seeks comment on providing additional regulatory fee relief to smaller entities by increasing the de minimis threshold from $500 to $1,000; allowing multiyear fee categories to be de minimis if the licensees' total fee for the year is no greater than the de minimis threshold; and eliminating certain fee categories from regulatory fees. (vi) The *NPRM* seeks comment on a proposal to reassign certain Wireline Competition Bureau FTEs and Wireless Telecommunications Bureau FTEs as indirect FTEs and reassign certain Wireline Competition Bureau FTEs as Wireless Telecommunications Bureau FTEs, for regulatory fee purposes.

B. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[116]

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[117] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [118] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[119] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[120]

5. Small Entities. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.[121] As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.[122] In addition, a ''small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.[123] In addition, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [124] U.S. Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.[125] We estimate that, of this total, as many as 89,327 entities may qualify as ''small governmental jurisdictions.'' [126] Thus, we estimate that most local government jurisdictions are small.

6. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [127] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[128] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[129] Thus, under this size standard, the majority of firms in this industry can be considered small.

7. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[130] According to census data from 2012, there were 3,117 establishments that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[131] The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the *NPRM.*

8. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer

[116] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[117] 5 U.S.C. 603(b)(3).

[118] 5 U.S.C. 601(6).

[119] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[120] 15 U.S.C. 632.

[121] *See* 5 U.S.C. 601(3) through (6).

[122] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *https://www.sba.gov/sites/default/files/advocacy/SB–FAQ–2016_WEB.pdf.*

[123] 5 U.S.C. 601(4).

[124] 5 U.S.C. 601(5).

[125] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *https://www.sba.gov/sites/default/files/advocacy/SB–FAQ–2016_WEB.pdf.*

[126] The 2011 U.S. Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local governmental organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. *See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.* If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

[127] *See http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[128] *See* 13 CFR 120.201, NAICS code 517110.

[129] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[130] 13 CFR 121.201, NAICS code 517110.

[131] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

employees.[132] According to census data from 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[133] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[134] Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.[135] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules proposed in this *NPRM.*

9. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[136] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[137] Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[138] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[139] Also, 72 carriers have reported that they are Other Local Service Providers.[140] Of this total, 70 have 1,500 or fewer employees.[141] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in this *NPRM.*

10. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[142] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[143] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[144] Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules proposed in this *NPRM.*

11. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[145] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[146] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[147] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[148] All 193 carriers have 1,500 or fewer employees.[149] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules proposed in this *NPRM.*

12. Local Resellers. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[150] Census data for 2012 show that 1,341 firms provided resale services during that year.[151] Of that number, 1,341 operated with fewer than 1,000 employees.[152] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[153] Of this total, an estimated 211 have 1,500 or fewer employees.[154] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules proposed in this *NPRM.*

13. Toll Resellers. The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[155] Under that size standard, such a business is small if it has 1,500

[132] 13 CFR 121.201, NAICS code 517110.

[133] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[134] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (September 2010) (*Trends in Telephone Service*).

[135] *See id.*

[136] 13 CFR 121.201, NAICS code 517110.

[137] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[138] *See Trends in Telephone Service,* at Table 5.3.

[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] 13 CFR 121.201, NAICS code 517110.

[143] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[144] *See Trends in Telephone Service,* at Table 5.3.

[145] *http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[146] 13 CFR 121.201, NAICS code 517911.

[147] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[148] *See Trends in Telephone Service,* at Table 5.3.

[149] *Id.*

[150] 13 CFR 121.201, NAICS code 517911.

[151] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[152] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[153] *See Trends in Telephone Service,* at Table 5.3.

[154] *Id.*

[155] 13 CFR 121.201, NAICS code 517911.

or fewer employees.[156] Census data for 2012 show that 1,341 firms provided resale services during that year.[157] Of that number, 1,341 operated with fewer than 1,000 employees.[158] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[159] Of this total, an estimated 857 have 1,500 or fewer employees.[160] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules proposed in the *NPRM.*

14. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[161] Census data for 2012 shows that there were 3,117 firms that operated that year.[162] Of this total, 3,083 operated with fewer than 1,000 employees.[163] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[164] Of these, an estimated 279 have 1,500 or fewer employees.[165] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the *NPRM.*

15. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[166] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.[167] Of this total, 955 firms had fewer than 1,000 employees.[168] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[169] Of this total, an estimated 261 have 1,500 or fewer employees.[170] Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules proposed in this *NPRM.*

16. Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [171] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: Those having $38.5 million or less in annual receipts.[172] The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,387.[173] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[174] We therefore estimate that the majority of commercial television broadcasters are small entities.

17. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [175] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

18. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[176] These stations are non-profit, and therefore considered to be small entities.[177] There are also 2,528 low power television stations, including Class A stations

[156] *Id.*

[157] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[158] *Id.*

[159] *Trends in Telephone Service* at Table 5.3.

[160] *Id.*

[161] 13 CFR 121.201, NAICS code 517110.

[162] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[163] *Id.*

[164] *Trends in Telephone Service,* at Table 5.3.

[165] *Id.*

[166] NAICS code 517210. *See http://www.census.gov/cgi-bin/ssd/naics/naiscsrch.*

[167] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[168] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[169] *Trends in Telephone Service,* at Table 5.3.

[170] *Id.*

[171] U.S. Census Bureau, 2012 NAICS code Economic Definitions, *http://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[172] 13 CFR 121.201, NAICS code 515120.

[173] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[174] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[175] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[176] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[177] *See generally* 5 U.S.C. 601(4), (6).

(LPTV).[178] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

19. Radio Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [179] The SBA has established a small business size standard for this category, which is: Such firms having $38.5 million or less in annual receipts.[180] U.S. Census data for 2012 show that 2,849 radio station firms operated during that year.[181] Of that number, 2,806 operated with annual receipts of less than $25 million per year.[182] According to Commission staff review of BIA Advisory Services, LLC's *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, the majority of such entities are small entities.

20. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[183] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[184] It is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

21. Cable Television and other Subscription Programming. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature, *e.g.,* limited format, such as news, sports, education, or youth-oriented. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[185] The SBA has established a size standard for this industry of $38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year.[186] Of this total, 319 operated with annual receipts of less than $25 million.[187] Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules proposed in this *NPRM.*

22. Cable Companies and Systems. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[188] Industry data indicate that there are currently 4,600 active cable systems in the United States.[189] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[190] In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[191] Current Commission records show 4,600 cable systems nationwide.[192] Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[193] Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

23. Cable System Operators (Telecom Act Standard). The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [194] There are approximately 52,403,705 cable video subscribers in the United States today.[195] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[196] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[197] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[198] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. Direct Broadcast Satellite (DBS) Service. DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of

[178] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[179] http://www.census.gov.cgi-bin/sssd/naics/naicsrch.

[180] 13 CFR 121.201, NAICS code 515112.

[181] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[182] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[183] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[184] 13 CFR 121.102(b) (an SBA regulation).

[185] *https://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[186] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[187] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US-51SSSZ5&prodType=Table.*

[188] 47 CFR 76.901(e).

[189] August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See www/fcc.gov/coals.*

[190] *See* SNL KAGAN at *www.snl.com/interactiveX/top cableMSOs aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc.*

[191] 47 CFR 76.901(c).

[192] *See* footnote 2, *supra.*

[193] August 5, 2015 report from the Media Bureau based on its research in COALS. *See www.fcc.gov/coals.*

[194] 47 CFR 76.901 (f) and notes ff. 1, 2, and 3.

[195] *See* SNL KAGAN at *www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.*

[196] 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

[197] *See* SNL KAGAN at *www.snl.com/Interactivex/TopCable MSOs.aspx.*

[198] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 47 CFR 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[199] The SBA determines that a wireline business is small if it has fewer than 1500 employees.[200] Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[201] Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: AT&T and DISH Network.[202] AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that DBS service is provided only by large firms.

25. All Other Telecommunications. ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[203] The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less.[204] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[205] Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the proposals in the *NPRM* can be considered small.

26. RespOrgs. Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.[206] Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.,* Carrier RespOrgs and Non-Carrier RespOrgs.

27. Carrier RespOrgs. Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers,[207] and Wireless Telecommunications Carriers (except satellite).[208]

28. The U.S. Census Bureau defines Wired Telecommunications Carriers as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[209] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[210] Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.[211] Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

29. The U.S. Census Bureau defines Wireless Telecommunications Carriers (except satellite) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[212] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[213] Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.[214] Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

30. Non-Carrier RespOrgs. Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are ''Other Services Related to Advertising'' [215] and ''Other Management Consulting Services.'' [216]

31. The U.S. Census defines Other Services Related to Advertising as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).[217] The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less.[218] Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than $10

[199] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[200] NAICs code 517110; 13 CFR 121.201.

[201] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

[202] *See 15th Annual Video Competition Report,* 28 FCC Rcd at 1057, Section 27.

[203] *http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.*

[204] 13 CFR 121.201; NAICs code 517919.

[205] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

[206] *See* 47 CFR 52.101(b).

[207] 13 CFR 121.201, NAICS code 517110.

[208] *Id.*

[209] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[210] 13 CFR 120,201, NAICS code 517110.

[211] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[212] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[213] 13 CFR 120.201, NAICS code 517120.

[214] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[215] 13 CFR 120.201, NAICS code 541890.

[216] 13 CFR 120.201, NAICS code 541618.

[217] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[218] 13 CFR 120.201, NAICS code 541890.

million.[219] Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

32. The U.S. Census defines Other Management Consulting Services as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.[220] The SBA has established a size standard for this industry of $15 million dollars or less.[221] Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts.[222] Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.[223]

33. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016 there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. This *NPRM* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[224]

36. This *NPRM* seeks comment on the Commission's regulatory fee collection for Fiscal Year 2017, as required by Congress each year. Specifically, we ask for comments each year in the Regulatory Flexibility Analysis on how to minimize adverse economic impact, imposed by our proposed rules, on small entities. The regulatory fees proposed in this *NPRM* do not include any new fee categories. However, the proposal to reduce fees for smaller broadcast entities may provide financial relief to smaller entities if it is adopted. The proposal to increase the de minimis threshold from $500 to $1,000 would, if adopted, allow additional smaller entities to pay no regulatory fees if their annual total amount of fees is no greater than $1,000. The proposal to allow multiyear licenses to be de minimis based on the total amount of fees owed each year, if adopted, would allow smaller entities with multiyear licenses to pay no regulatory fees depending on the total amount owed each year. Finally, the proposal to exclude certain licenses from regulatory fees may, if adopted, provide financial relief to smaller entities because they would not have to pay regulatory fees for those particular licenses at all.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

37. None.

VIII. Ordering Clause

38. Accordingly, *it is ordered* that, pursuant to section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, this *Notice of Proposed Rulemaking is hereby adopted.*

Federal Communications Commission.

Katura Jackson,

Federal Register Liasion Officer.

[FR Doc. 2017–11578 Filed 6–5–17; 8:45 am]

BILLING CODE 6712–01–P

[219] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[220] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[221] 13 CFR 120.201, NAICS code 514618.

[222] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[223] The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

[224] 5 U.S.C. 603(c)(1) through (c)(4).

Notices

Federal Register

Vol. 82, No. 107

Tuesday, June 6, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–17–0009; NOP–17–01]

National Organic Standards Board (NOSB): Call for Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Call for nominations.

SUMMARY: The National Organic Standards Board (NOSB) was established to assist in the development of standards for substances to be used in organic production and to advise the Secretary on the implementation of the Organic Foods Production Act of 1990 (OFPA). Through this Notice, the United States Department of Agriculture (USDA) is announcing its call for nominations to fill one (1) upcoming vacancy for an individual with expertise in areas of environmental protection and resource conservation. The five-year term will begin January 24, 2018, and end January 23, 2023. Additionally, the USDA seeks nominations for a pool of candidates that the Secretary of Agriculture can draw upon as replacement appointees if unexpected vacancies occur. A person appointed to fill an unexpected vacancy will serve for the remainder of the 5-year term of the vacant position. Previous applicants who wish to be considered must reapply.

DATES: Written nominations must be postmarked on or before August 7, 2017.

ADDRESSES: Applications can be sent via email to Michelle Arsenault at *Michelle.Arsenault@ams.usda.gov,* or mailed to: USDA–AMS–NOP, 1400 Independence Avenue SW., Room 2642–S., Ag Stop 0268, Washington, DC 20250–0268. Electronic submittals are preferred.

FOR FURTHER INFORMATION CONTACT: Michelle Arsenault, (202) 720–0081; Email: *Michelle.Arsenault@ ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The OFPA, as amended (7 U.S.C. 6501 *et seq.*), requires the Secretary to establish the NOSB in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 *et seq.*). The NOSB is composed of 15 members including: Four individuals who own or operate an organic farming operation; two individuals who own or operate an organic handling operation; one individual who owns or operates a retail establishment with significant trade in organic products; three individuals with expertise in areas of environmental protection and resource conservation; three individuals who represent public interest or consumer interest groups; one scientist with expertise in the fields of toxicology, ecology, or biochemistry; and one individual who is a certifying agent.

As per the OFPA, individuals seeking appointment to the NOSB must meet the definition of the position that they seek as identified under 7 U.S.C. 6518, as well as satisfy the selection criteria for an NOSB member. Selection criteria include the following: An understanding of organic principles and practical experience in the organic community; demonstrated experience and interest in organic production and organic certification; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; a commitment to the integrity of the organic food and fiber industry; demonstrated experience in the development of public policy such as participation on public or private advisory boards, boards of directors or other comparable organizations; support of consumer and public interest organizations; participation in standards development or involvement in educational outreach activities; the ability to evaluate technical information and to fully participate in Board deliberation and recommendations; the willingness to commit the time and energy necessary to assume Board duties; and other such factors as may be appropriate for specific positions.

To nominate yourself or someone else, please submit the following: a resume (required), Form AD–755 (required), which can be accessed at: *http://www.usda.gov/documents/OCIO_AD_755_Master_2012.pdf,* a cover letter (optional), and a list of endorsements or letters of recommendation (optional). Resumes must be no longer than 5 pages, and should include a summary of the following information: Current and past organization affiliations; areas of expertise; education; career positions held; any other notable positions held. Previous applicants who wish to be considered must reapply.

If USDA receives a request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) for records relating to NOSB nominations, your application materials may be released to the requester. Prior to the release of the information, personally identifiable information protected by the Privacy Act, 5 U.S.C. 552a, will be redacted.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that the recommendations of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: May 31, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–11639 Filed 6–5–17; 8:45 am]

BILLING CODE 3410–02–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Tennessee (State) Advisory

Committee will hold a meeting on Wednesday, June 21, 2017 to discuss potential participants to the hearing on civil asset forfeiture.

DATES: The meeting will be held on Wednesday, June 21, 2017 12:30 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 888–452–4005, conference ID: 5512313.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov* or (404) 562–7006.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–452–4005, conference ID: 5512313. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by July 21, 2017. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

Agenda

Welcome and Call to Order
  Diane DiIanni, Tennessee SAC Chairman
  Jeff Hinton, Regional Director
Regional Update—Jeff Hinton
New Business: Discussion of Potential Participants to the Hearing:
  Diane DiIanni, Tennessee SAC Chairman/Staff/Advisory Committee
Public Participation
Adjournment

Dated: May 31, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–11617 Filed 6–5–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Tennessee Advisory Committee will hold a meeting on Wednesday, July 12, 2017, to finalize potential participants to the hearing on civil asset forfeiture.

DATES: The meeting will be held on Wednesday, July 12, 2017 12:30 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 800–500–3170, conference ID: 6846142.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov* or (404) 562–7006.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 800–500–3170, conference ID: 6846142. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by July 10, 2017. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562–7005, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Southern Regional Office at (404) 562–7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

Agenda

Welcome and Call to Order
  Diane DiIanni, Tennessee SAC Chairman
  Jeff Hinton, Regional Director
Regional Update—Jeff Hinton
New Business: Finalize Potential Participants to the Hearing:
  Diane DiIanni, Tennessee SAC Chairman/Staff/Advisory Committee
Public Participation
Adjournment

Dated: May 31, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–11618 Filed 6–5–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether

increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/17/2017 through 5/25/2017]

Firm name	Firm address	Date accepted for investigation	Product(s)
Mursix Corporation	2401 North Executive Park Drive, Yorktown, IN 47396.	5/18/2017	The firm manufactures stamped metal parts for the automotive industry.
Summit Corporation of America	1430 Waterbury Road, Thomaston, CT 6787.	5/24/2017	The firm is a complete electroplating production facility that operates over 25 plating lines for continuous strip and wire, as well as individual parts plating by rack or barrel.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2017–11631 Filed 6–5–17; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectuangular pipe and tube (LWRPT) from Turkey. The period of review (POR) is May 1, 2015, through April 30, 2016. This administrative review covers nine exporters of the subject merchandise, including two mandatory respondents, Cinar Boru Profil Sanayi ve Ticaret A.S. (CINAR) and Noksel Celik Boru Sanayi A.S. (Noksel). The Department preliminarily determines that CINAR and Noksel made sales of subject merchandise at less than normal value during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill or Patrick O'Connor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3518 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the antidumping order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 millimeters from Turkey. The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States at subheadings 7306.61.50.00 and 7306.61.70.60. For a full description of the scope of the order, *see* Preliminary Decision Memorandum.[1]

Methodology

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[2] Further, a list of the topics discussed in the Preliminary Decision Memoradum is attached as an appendix to this notice. The Preliminary Decision Memorandum 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://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that weighted-average dumping margins exist for the respondents for the period May 1, 2015, through April 30, 2016, as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Cinar Boru Profil Sanayi ve Ticaret A.S	4.00
Noksel Celik Boru Sanayi A.S	5.05

[1] *See* Memorandum from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance ''Light-Walled Rectangular Pipe and Tube from Turkey: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,'' dated concurrently with, and hereby incorporated by reference (Preliminary Decision Memorandum).

[2] *See* Preliminary Decision Memorandum.

Manufacturer/exporter	Weighted-average margin (percent)
Toscelik Profil ve Sac Endustrisi A.S	4.87
Toscelik Metal Ticaret A.S	4.87
Tosyali Dis Ticaret A.S	4.87
Yucel Boru ve Profil Endustrisi A.S	4.87
Yucelboru Ihracat Ithalat ve Pazarlama A.S	4.87
Cayirova Boru Sanayi ve Ticaret A.S	4.87
Agir Haddecilik A.S	4.87

For the rate for non-selected respondents in an administrative review, generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' With two respondents, we normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies.[3] Accordingly, we have applied a rate of 4.87 percent to the non-selected companies, as set forth in the chart above.[4]

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[5] For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction.[6] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of LWRPT from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 27.04 percent *ad valorem,* the all-others rate established in the less-than-fair-value investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department intends to disclose the calculations used in our analysis to interested parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[9] Executive summaries should be limited to five pages total, including footnotes.[10] Case and rebuttal briefs should be filed using ACCESS.[11]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS within 30 days after the date of publication of this notice. Requests

[3] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[4] *See* Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV, Enforcement and Compliance to the File, ''Calculation of the Rate for Non-Selected Respondents,'' dated May 31, 2017.

[5] In these preliminary results, the Department applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[6] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[7] *See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey,* 73 FR 19814 (April 11, 2008).

[8] *See* 19 CFR 351.309(d)(1).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *Id.*

[11] *See* 19 CFR 351.303.

should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[12]

Notification to Importers

This notice also serves as a preliminary 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 review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: May 31, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Selection of Respondents
V. Preliminary Determination of No Shipments
VI. Affiliation
VII. Respondents Not Selected for Individual Examination
VIII. Allegation of Duty Evasion
IX. Use of Partial Adverse Facts Available
X. Discussion of the Methodology
  a. Comparison to Normal Value
  i. Determination of a Comaparison Methodology
  ii. Results of Differential Pricing
  b. Product Comparisons
  c. Date of Sale
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[FR Doc. 2017–11667 Filed 6–5–17; 8:45 am]

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[12] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–869]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2015–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on diffusion-annealed, nickel-plated flat-rolled steel products (certain nickel-plated, flat-rolled steel) from Japan.[1] The period of review (POR) is May 1, 2015, through April 30, 2016. The review covers two producers/exporters of the subject merchandise, Toyo Kohan Co., Ltd. (Toyo Kohan) and Nippon Steel & Sumitomo Metals Corporation (NSSMC). We preliminarily determine that sales of subject merchandise by Toyo Kohan were made at less than normal value during the POR. We also preliminarily determine that NSSMC did not have reviewable entries during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2016, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain nickel-plated, flat-rolled steel from Japan.[2] On May 11, 2016, respondent Toyo Kohan requested that the Department conduct an administrative review of its sale and shipments to the United States during the POR.[3] On May 31, 2016, the petitioner, Thomas Steel Strip Corporation (Thomas Steel), requested that the Department conduct administrative reviews of Toyo Kohan and NSSMC.[4] On July 7, 2016, in response to these timely requests, and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), the Department initiated an administrative review of the antidumping duty order on certain nickel-plated, flat-rolled steel from Japan with respect to both Toyo Kohan and NSSMC.[5]

Scope of the Order

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.,* ''diffusion-annealed''); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this order, ''nickel-based alloys'' include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this order are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. The foregoing HTSUS subheadings are provided only for convenience and customs purposes. The written description of the scope of this order is dispositive.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 44260 (July 7, 2016) (*Initiation Notice*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 26206 (May 2, 2016).

[3] *See* Letter from Toyo Kohan to the Department regarding ''Toyo Kohan's Request for Antidumping Administrative Review, Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan,'' dated May 11, 2016.

[4] *See* Letter from Thomas Steel to the Department regarding ''Diffusion-Annealed Nickel-Plated Flat-Rolled Steel from Japan: Request for Second Administrative Review of Antidumping Order,'' dated May 31, 2016.

[5] *See Initiation Notice,* 81 FR at 44262.

Preliminary Determination of No Shipments

Subsequent to the initiation of this administrative review, the Department received a timely submission from NSSMC certifying that it did not have sales, shipments, or exports of subject merchandise to the United States during the POR.[6] To confirm NSSMC's no shipment claim, the Department issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) requesting that it review NSSMC's no-shipment claim.[7] CBP did not report that it had any information to contradict NSSMC's claim of no shipments during the POR.[8] Therefore, we preliminarily determine that NSSMC had no shipments to the United States, and therefore, no reviewable entries, during the POR. In addition, we find it is not appropriate to rescind the review with respect to NSSMC, but, rather to complete the review and issue appropriate instructions to CBP based on the final results of the review, consistent with our practice.[9]

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Act. For Toyo Kohan, export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the memorandum from Gary Taverman, Deputy Assistant Secretary for AD/CVD Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, titled ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products (Certain Nickel-Plated, Flat-Rolled Steel) from Japan; 2015–2016'' (Preliminary Decision Memorandum), which is issued concurrent with and hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that, for the period May 1, 2015, through April 30, 2016, the following dumping margin exists:

Manufacturer/exporter	Weighted-average margin (percent)
Toyo Kohan Co., Ltd.	1.42

Disclosure and Public Comment

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[10] Interested parties may submit case briefs to the Department in response to these preliminary results no later than 30 days after the publication of these preliminary results.[11] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[12]

Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS.[14] In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5 p.m. Eastern Time. Case and rebuttal briefs must be served on interested parties.[15]

Within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs.[16] Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.[17] Hearing requests should be electronically submitted to the Department via ACCESS.[18] The Department's electronic records system, ACCESS, must successfully receive an electronically-filed document in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[19] Parties will be notified of the time and location of the hearing.

The Department intends to publish the final results of this administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended.[20]

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.[21] If Toyo Kohan's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If Toyo Kohan's weighted-average

[6] *See* Letter from NSSMC to the Department regarding ''Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Certification on No U.S. Sales During Administrative Review Period,'' dated August 5, 2016 and Letter from NSSMC to the Department regarding ''Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Response to July 25, 2016 Department Questionnaire,'' dated August 10, 2016.

[7] *See* the Memorandum to the File from Dena Crossland, ''Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: No Shipments During the Period of Review from Nippon Steel & Sumitomo Metals Corporation,'' dated May 11, 2017.

[8] *Id.*

[9] *See e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[10] *See* 19 CFR 351.224(b)

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d)(1) and (2).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See generally* 19 CFR 351.303.

[15] *See* 19 CFR 351.303(f).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d)(1).

[18] *See* generally, 19 CFR 351.303.

[19] *See* 19 CFR 351.310(c).

[20] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

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

dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [22] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the POR produced by Toyo Kohan for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for intermediate company(ies) involved in the transaction.[23] In addition, if the Department determines that NSSMC had no shipments of subject merchandise, any suspended entries that entered under NSSMC's case number will be liquidated at the all-other's rate.[24] The all-others rate is 45.42 percent.[25] We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Toyo Kohan will be that established in the final results of this administrative review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the less-than-fair value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 45.42 percent, which is the all-others rate established in the investigation.[26] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: May 30, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Finding of No Shipments
V. Comparisons to Normal Value
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VII. Discussion of Methodology
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  8. Constructed Value
  F. Currency Conversion
VIII. Recommendation

[FR Doc. 2017–11672 Filed 6–5–17; 8:45 am]

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[22] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[23] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[24] *Id.*

[25] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping Duty Order,* 79 FR 30816, 30817 (May 29, 2014) (*Order*).

[26] *See Order,* 79 FR at 30817.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: On April 10, 2017, The Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (PRC). Based on the timely withdrawal of the requests for review of certain companies, we are now rescinding this administrative review for the period February 1, 2016 through January 31, 2017 with respect to 191 companies.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Anwesen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–0131, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2017, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on small diameter graphite electrodes from the PRC for the period of review (POR) February 1, 2016, through January 31, 2017.[1]

On February 28, 2017, SGL Carbon LLC and Superior Graphite Co. (the petitioners) requested an administrative review of the order for 194 producers and/or exporters of the subject merchandise.[2] On April 10, 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on small diameter graphite electrodes from the People's Republic of China with

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 9709 (February 8, 2017).

[2] *See* the petitioners' submission, ''Small Diameter Graphite Electrodes from the People's Republic of China—Request for Initiation of Antidumping Administrative Review,'' dated February 28, 2017.

respect to 194 companies.[3] On April 21, 2017, the petitioners withdrew their request for an administrative review for 191 out of 194 companies.[4] See the *Initiation Notice* for the full list of companies for which the Department initiated a review. No other party requested an administrative review of this order.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, the petitioners timely withdrew their review request, in part, by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, we are rescinding the administrative review of the antidumping duty order on small diameter graphite electrodes from the PRC for the period February 1, 2016, through January 31, 2017, with respect to the 191 for which all review requests were withdrawn. The review will continue with respect to the remaining three companies: (1) Fangda Group;[5] (2) Fushun Jinly Petrochemical Carbon Co., Ltd.; and (3) Xuzhou Jianglong Carbon Products Co., Ltd.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

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

We intend to issue and publish this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: May 31, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–11670 Filed 6–5–17; 8:45 am]

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[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 17188 (April 10, 2017) (*Initiation Notice*).

[4] *See* the petitioners' submission, ''Small Diameter Graphite Electrodes from the People's Republic of China—Petitioners' Withdrawal of Certain Requests for Review and Respondent Selection Comments,'' dated April 20, 2017.

[5] The Fangda Group consists of Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Rescission of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain preserved mushrooms (mushrooms) from India for the period of February 1, 2016 through January 31, 2017.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Denisa Ursu, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; Telephone: (202) 482–4929 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2017, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from India for the period of February 1, 2016 through January 31, 2017.[1]

On February 28 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from Himalya International Limited and Himalya International Inc. (collectively, Himalya) to conduct an administrative review of the antidumping duty order on mushrooms from India manufactured and exported by Himalya International Limited.[2]

On April 10, 2017, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order.[3] This administrative review covers Himalya during the period February 1, 2016 through January 31, 2017. On May 16, 2017, Himalya timely withdrew its request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, if the party that requested the review withdraws its request within 90 days of the date of publication of notice of initiation of the requested review. Himalya withdrew its review request before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, in response to the timely withdrawal of the review request, the Department is rescinding in its entirety the administrative review of the antidumping duty order on mushrooms from India for the review period February 1, 2016 through January 31, 2017.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 9709 (February 8, 2017).

[2] *See* Himalya's letter, ''Preserved Mushrooms from India—Request for Administrative Review of Himalya International Inc & Himalya International Limited,'' dated February 28, 2017.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 17188 (April 10, 2017).

[4] *See* Himalya's letter, ''Certain Preserved Mushrooms from India: Withdraw of Admin Review Request Made on February 28th, 2017'' dated May 16, 2017.

assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: May 31, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–11671 Filed 6–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–818]

Certain Steel Nails From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam (Vietnam). The period of review (POR) is December 29, 2014, through June 30, 2016. The Department preliminarily determines that Truong Vinh Ltd. (Truong Vinh), Rich State, Inc. (Rich State), and Dicha Sombrilla Co., Ltd. (Dicha Sombrilla) did not demonstrate their eligibility for a separate rate and are, therefore, part of the Vietnam-wide entity. Further, because Mid Continent Steel & Wire, Inc. (the petitioner) withdrew its request for review of eight companies, we are rescinding the administrative review with regard to them. Interested parties are invited to comment on these preliminary results.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1979 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2015, the Department published in the **Federal Register** the antidumping duty order on certain steel nails from Vietnam.[1] On July 5, 2016, the Department published in the **Federal Register** an opportunity to request administrative review of the *Order*.[2] The Department received requests for a review of 11 companies.[3] On September 12, 2016, the Department published in the **Federal Register** a notice of initiation of this review, covering the above-referenced companies.[4] On September 28, 2016, the Department placed entry data from U.S. Customs and Border Protection (CBP) on the record of this review.[5] On October 18, 2016, the Department issued its antidumping duty questionnaires to Truong Vinh and Rich State. On November 8, 2016, both companies, in a joint submission, stated that neither intended to respond to the Department's questionnaires.[6]

Scope of the Order

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches. Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00,

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (the *Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 43584 (July 5, 2016).

[3] *See* Letter from Amifast Corporation, ''Amifast Corporation; Request for Administrative Review; Case No. A–522–818; Antidumping Duty Order on Steel Nails from the Socialist Republic of Vietnam,'' dated August 1, 2016. *See also* Letter from Petitioner, ''Certain Steel Nails from the Socialist Republic of Vietnam: Request for Administrative Reviews,'' dated August 1, 2016. *See also* Letter from Olympic Manufacturing Group, ''Request for Administrative Review and Request to Defer Administrative Review of the Antidumping Duty Order on Steel Nails from the Socialist Republic of Vietnam (A–552–818) (POR: December 29, 2014—June 30, 2016),'' dated August 1, 2016. *See also* Letter from Truong Vinh, ''Request for Administrative Review and Request to Defer Administrative Review of the Antidumping Duty Order on Steel Nails from the Socialist Republic of Vietnam (A–552–818) (POR: December 29, 2014—June 30, 2016),'' dated August 1, 2016.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12 2016) (*Initiation Notice*).

[5] *See* Memorandum, ''Certain Steel Nails from Vietnam: U.S. Customs and Border Protection Information for 12/29/14–6/30/2016 Review Period,'' dated September 28, 2016.

[6] *See* Letter from Truong Vinh and Rich State, ''Truong Vinh Ltd. and Rich State Inc., Questionnaire Response, First Annual Administrative Review of the Antidumping Duty Order on Steel Nails from the Socialist Republic of Vietnam, (A–552–818),'' dated November 8, 2016. Therein, Truong Vinh and Rich State indicated that they believe that their zinc anchors would be found outside of the scope of the *Order* based on an ongoing scope proceeding. As such, Truong Vinh and Rich State stated that they would not respond to the Department's October 18, 2016, request for information, and that this letter constituted their full response to sections A, C, and D of the Department's questionnaire. Neither company submitted a separate rate application.

8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[7] The Preliminary Decision Memorandum 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 Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

On October 5, 2016, the petitioner withdrew its request for review with respect to the following eight companies: Astrotech Steels Private Limited; Blue Moon Logistics Private Ltd.; Bollore Logistics Vietnam Co. Ltd.; Dahnay Logistics Private Ltd; FGS Logistics Co. Ltd.; Honour Lane Shipping Ltd; SDV Vietnam Co. Ltd.; and United Nail Products Co. Ltd.[8] No other parties requested review of these eight companies. In response to the petitioner's timely filed withdrawal request, we are rescinding this administrative review, pursuant to 19 CFR 351.213(d)(1),[9] with respect to the above-named companies.

Vietnam-Wide Entity

The Vietnam-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity.[10] Because no party requested a review of the Vietnam-wide entity in this review, nor did the Department self-initiate a review of the Vietnam-wide entity, the entity is not under review and the entity's rate (*i.e.,* 323.99 percent) is not subject to change. In this administrative review, a review was requested for Truong Vinh, Rich State, and Dicha Sombrilla, but none of these companies filed a separate rate application, separate rate certification, or no-shipment letter. Accordingly, the Department considers Truong Vinh, Rich State, and Dicha Sombrilla to be part of the Vietnam-wide entity.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period December 29, 2014, through January 30, 2016:

Company	Weighted-average dumping margins (percent)
Dicha Sombrilla Co., Ltd	323.99
Rich State, Inc	323.99
Truong Vinh Ltd	323.99

Disclosure and Public Comment

Normally, the Department discloses to interested parties the calculations performed for the preliminary results within five days of the publication of this notice in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied the Vietnam-entity margin to the mandatory respondents in this administrative review, there are no calculations to disclose. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice in the **Federal Register**.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[12] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS.[14]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.[15] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[16] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[17] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to assess duties at the *ad valorem* margin rates published above. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. The Department will assess duties only on entries of subject merchandise (*i.e.,* Vietnam-origin steel nails).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse,

[7] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review, 2014–2016: Certain Steel Nails from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See* Petitioner's Review Request Withdrawal Letter.

[9] *See* the Preliminary Decision Memorandum, at the section entitled, ''Partial Rescission of Administrative Review.''

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d)(1).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See* 19 CFR 351.303.

[15] *See* 19 CFR 351.310(c)

[16] *See* 19 CFR 351.310(d).

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

for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Truong Vinh, Rich State, and Dicha Sombrilla, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnam exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the NME-wide rate of 323.99 percent; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: May 24, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Partial Rescission of Administrative Review
5. Discussion of the Methodology
6. Vietnam-Wide Entity
7. Recommendation

[FR Doc. 2017–11668 Filed 6–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2015

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

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty (CVD) order on certain magnesia carbon bricks (MC Bricks) from the People's Republic of China (PRC) for the period January 1, 2015, through December 31, 2015.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2016, based on a timely request for review by the Magnesia Carbon Bricks Fair Trade Committee (Fair Trade Committee),[1] the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of an administrative review of the CVD order on MC Bricks from the PRC with respect to 18 companies for the period of review (POR) January 1, 2015, through December 31, 2015.[2] No other party requested an administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, the Fair Trade Committee timely withdrew its request for review within the 90-day deadline, and no other party requested an administrative review of the CVD order. Therefore, in response to the timely withdrawal of the request for review, and in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the CVD order on MC Bricks from the PRC for the period January 1, 2015, through December 31, 2015, in its entirety.

Assessment

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

Notifications

This notice serves as a final 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). Timely written notification of the return or destruction of APO materials or the conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: May 31, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–11674 Filed 6–5–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Letter to the Secretary from the Fair Trade Committee, ''Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review,'' (September 30, 2016). The Fair Trade Committee is an *ad hoc* association comprised of the following U.S. producers of magnesia carbon bricks: Resco Products, Inc.; Magnesita Refractories Company; and HarbisonWalker International.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 78778 (November 9, 2016) (*November 2016 Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 4294 (January 13, 2017), which corrected the misspelling of certain company names in the *November 2016 Initiation Notice.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2015–2016

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

SUMMARY: In response to a request by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey. The period of review (POR) is May 1, 2015, to April 30, 2016. This review covers 14 companies. The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Chelsey Simonovich; AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2924 or 202–482–1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this administrative review [1] on July 7, 2016.[2] This review covers 14 companies: Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) and Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) (collectively, Borusan); [3] Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik); [4] Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); and Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Cayirova Boru Sanayi ve Ticaret A.S. (collectively, the Yucel Group).

On May 11, 2017, the Department extended the deadline for issuing its preliminary results of this administrative review to May 31, 2017.[5] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[6] A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum 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 *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise subject to the order is welded pipe and tube. The welded pipe and tube subject to the order is currently classifiable under subheading 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On July 18, 2016, Erbosan submitted a letter to the Department certifying that it had no sales, shipments, or entries of the subject merchandise to the United States during the POR.[7] Erbosan further certified that it did not know or have reason to know that any of its customers would subsequently export or sell Erbosan's merchandise to the United States during the POR. On August 8, 2016, Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco submitted letters to the Department certifying that they each individually had no sales, shipments, or entries of the subject merchandise to the United States during the POR.[8] On May 1, 2017, consistent

[1] Wheatland Tube Company, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret requested the instant administrative review.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 44265 (July 7, 2016) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 53122 (August 11, 2016).

[3] In prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as a single entity. *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014,* 80 FR 76674, 76674 n.2 (December 10, 2015) (*Welded Pipe and Tube from Turkey 2013–2014*). We preliminarily determine that there is no evidence on the record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity. The record does not support treating the following companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S. entity: (1) Borusan Birlesik; (2) Borusan Gemlik; (3) Borusan Ihracat; (4) Borusan Ithicat; and (5)Tubeco. Accordingly, as discussed *infra,* each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review.

[4] In prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single entity. *See, e.g., Welded Pipe and Tube from Turkey 2013–2014.* We preliminarily determine that there is no evidence on the record for altering our treatment of Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Tosceilk Metal as a single entity. The petitioners requested a review of Toscelik Metal, and there has been no withdrawal of that request. Therefore, Toscelik Metal will be reviewed as part of the single entity Toscelik.

[5] *See* Memorandum, ''Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 11, 2017.

[6] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2015–2016'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* Letter from Erbosan, Re: No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. in the 2015–2016 Administrative Review of the Antidumping Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey, dated July 18, 2016.

[8] *See* Letter from Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Iharcat, Borusan Ithicat, and Tubeco, Re: Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A–489–501: No Shipment Letter, dated August 8, 2016.

with our practice, the Department issued a ''No Shipment Inquiry'' to U.S. Customs and Border Protection (CBP) to confirm that there were no entries of welded pipe and tube from Turkey exported by Erbosan, Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, or Tubeco during the POR.[9] We received no information from CBP contrary to the claims ofthese companies.

Based on the foregoing, we preliminarily determine that Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco each had no shipments during the POR. Also, consistent with our practice, the Department finds that it is not appropriate to rescind the review with respect to these six companies, but rather to complete the review with respect to them, and to issue appropriate instructions to CBP based on the final results of this review.[10] Thus, if we continue to find that Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of subject merchandise produced by them, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[11]

Furthermore, as noted above, Borusan Istikbal also submitted a no-shipment certification on August 8, 2017. However, we continue to find Borusan Istikbal to be part of the single entity, Borusan, and we find no record evidence that warrants altering this treatment. Therefore, because we find Borusan to have had shipments during this POR, we have not made a preliminary determination of no-shipments with respect to Borusan Istikbal.

Rates for Non-Examined Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}''

In this review, we have preliminarily calculated a weighted-average dumping margin for Borusan that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, the Department preliminarily assigned to the companies not individually examined (*i.e.,* the Yucel Group) the 1.35 percent weighted-average dumping margin calculated for Borusan.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period May 1, 2015 through April 30, 2016 are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S	1.35
Toscelik Profil ve Sac Endustrisi A.S./Tosyali Dis Ticaret A.S./Toscelik Metal Ticaret A.S	0.00
Yucel Boru ve Profil Endustrisi A.S	1.35
Yucelboru Ihracat Ithalat ve Pazarlama A.S	1.35
Cayirova Boru Sanayi ve Ticaret A.S	1.35

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[12] Interested parties may submit cases briefs no later than 30 days after the date of publication of this notice.[13] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the due date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] Case and rebuttal briefs should be filed using ACCESS.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.[17] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

In order to be properly filed, all ACCESS submissions must successfully receive an electronically filed document in its entirety by 5 p.m. Eastern Time.

Unless otherwise extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

[9] *See* CBP message number 7121305, dated May 1, 2017.

[10] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(c)(1)(ii).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See* 19 CFR 351.303.

[17] *See* 19 CFR 351.310(c).

If either Borusan's or Toscelik's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rate for Non-Examined Companies'' section, above.

With respect to Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco, if we continue to find that these companies had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by these companies, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Toscelik will be zero, unless there is change in Toscelik's dumping margin in the final results of this review; (2) the cash deposit rate for Borusan will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (3) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (4) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will continue to be 14.74 percent, the all-others rate established in the LTFV investigation.[19] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(1)(b)(4).

Dated: May 31, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Rates for Non-Examined Companies
6. Comparisons to Normal Value
7. Product Comparisons
8. Date of Sale
9. Export Price
10. Normal Value
11. Currency Conversion
12. Recommendation

[FR Doc. 2017–11666 Filed 6–5–17; 8:45 am]

BILLING CODE 3510–DS–P

[18] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[19] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2015–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on aluminum extrusions from the People's Republic of China (PRC). The period of review (POR) is May 1, 2015, through April 30, 2016. These preliminary results cover 191 companies and the PRC-wide entity for which an administrative review was initiated. The PRC-wide entity did not respond to the Department's initial quantity and value questionnaires (Q&Vs), and therefore the Department is preliminarily applying adverse facts available (AFA) to the PRC-wide entity. The Department selected the following companies as mandatory respondents: Kam Kiu Aluminium Products Sdn. Bhd. (Kam Kiu) and tenKsolar (Shanghai) Co., Ltd. (tenKsolar). The Department preliminarily determines that Kam Kiu did not demonstrate eligibility for a separate rate and is, therefore, part of the PRC-wide entity. The Department further preliminarily determines that because we lack sufficient record information to allow the Department to calculate a margin for tenKsolar's reported sales of subject merchandise into the United States during the POR, the rate applied to tenKsolar's merchandise upon entry continues to be the AD rate applied to tenKsolar, except to adjust for countervailable duty (CVD) subsidies determined under the parallel aluminum extrusions CVD order. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone:

(202) 482–2657 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2016, the Department published the notice of initiation of the administrative review of the AD order on aluminum extrusions from the PRC [1] for the period May 1, 2015, through April 30, 2016, covering 191 companies and the PRC-wide entity.[2]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[4]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Extension of Deadlines for Preliminary Results

On January 3, 2017, the Department extended the period of time for issuing the preliminary results of this review until May 11, 2017.[5] On May 5, 2017, the Department again extended the period of time for issuing the preliminary results of this review until May 31, 2017.[6]

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), based on the timely withdrawal of the requests for review, we are partially rescinding this administrative review with respect to 181 of the 191 companies named in the *Initiation Notice.*[7] *See* Appendix II for a list of these companies.[8]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Determination Regarding tenKsolar's Reported Sales

Based on information submitted by tenKsolar, we preliminarily find that we lack sufficient record information to allow the Department to calculate a margin for tenKsolar's reported sales of subject merchandise during the POR.[9] Accordingly, we preliminarily determine that the rate which should be applied to tenKsolar is the AD rate applied to its merchandise upon entry. Consistent with our practice in non-market economy (NME) cases, the Department is not rescinding this review with respect to tenKsolar, but intends to complete the review of tenKsolar and issue appropriate

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (the *Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 44260 (July 7, 2016) (*Initiation Notice*).

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2015–2016,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Preliminary Decision Memorandum for a complete description of the scope of the *Order.*

[5] *See* Memorandum, ''Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 3, 2017.

[6] *See* Memorandum, ''Aluminum Extrusions from the People's Republic of China: Additional Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 5, 2017.

[7] *See Initiation Notice,* 81 FR at 44262–44265.

[8] *See* Preliminary Decision Memorandum for further details.

[9] *See* Preliminary Decision Memorandum, at 10–12.

instructions to CBP based on the final results of this review.[10]

Separate Rates

In the *Initiation Notice,* we informed parties of the opportunity to request a separate rate.[11] In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is the Department's policy to assign all exporters of merchandise subject to an administrative review involving 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. Companies that wanted to be considered for a separate rate in this review were required to timely file a separate rate application (SRA) or a separate rate certification (SRC) to demonstrate their eligibility for a separate rate. SRAs and SRCs were due to the Department within 30 calendar days of the publication of the *Initiation Notice.*[12]

Mandatory respondent Kam Kiu submitted a SRC,[13] but did not respond to any section of the Department's antidumping questionnaire; instead, Kam Kiu withdrew from active participation as a mandatory respondent.[14] Accordingly, the Department cannot analyze or verify the veracity of Kam Kiu's claims of being separate from the PRC-wide entity for purposes of its export activities. As a result, we preliminarily determine that Kam Kiu did not demonstrate its eligibility for a separate rate in this review.[15] Mandatory respondent tenKsolar submitted a SRC,[16] as well as timely responses to each section of the Department's antidumping questionnaire to which it was required to submit a response.[17] Based on the information on the record, we preliminarily determine that tenKsolar demonstrated its eligibility for a separate rate in this review.

The Department did not receive a SRA or SRC from any of the other entities remaining under review. As a result, we preliminarily determine that the following entities are not eligible for a separate rate in this administrative review: (1) Atlas Integrated Manufacturing Ltd.; (2) Classic & Contemporary Inc.; (3) Dongguan Golden Tiger Hardware Industrial Co., Ltd.; (4) Jiaxing Jackson Travel Products Co., Ltd.; (5) Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; (6) Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.; (7) Sincere Profit Limited; and (8) Suzhou New Hongji Precision Part Co.[18]

Application of Adverse Facts Available

The Department preliminarily determines that the use of facts otherwise available is warranted with respect to the PRC-wide entity, in accordance with sections 776(a)(2)(A) and (C) of the Act. The Department issued a Q&V questionnaire to the PRC-wide entity on December 2, 2016;[19] however, the PRC-wide entity did not respond to the Department's Q&V questionnaire. As a result, we preliminarily find that the PRC-wide entity withheld necessary information that was requested by the Department, significantly impeding the proceeding.

Further, pursuant to section 776(b) of the Act, the Department preliminarily determines that, because the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, an adverse inference is warranted.

PRC-Wide Entity

We preliminarily find that the following entities are part of the PRC-wide entity in this administrative review because they failed to submit a Q&V response, a SRA, a SRC, or (in the case of Kam Kiu) were selected as a mandatory respondent and failed to respond to the AD questionnaire: (1) Kam Kiu; (2) Atlas Integrated Manufacturing Ltd.; (3) Classic & Contemporary Inc.; (4) Dongguan Golden Tiger Hardware Industrial Co., Ltd.; (5) Jiaxing Jackson Travel Products Co., Ltd.; (6) Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; (7) Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.; (8) Sincere Profit Limited; and (9) Suzhou New Hongji Precision Part Co.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[20] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. The petitioner[21] requested a review of the PRC-wide entity in the instant review; therefore, the PRC-wide entity is currently under review.

Adjustments for Countervailable Subsidies

Because no mandatory respondent established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, for these preliminary results, the Department did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for the separate-rate recipients.

Pursuant to section 772(c)(1)(C) of the Act, we made an adjustment for countervailable export subsidies for tenKsolar. We calculated this adjustment as the simple average of the countervailable export subsidies determined for the mandatory respondents in the 2014 (*i.e.,* most recently completed) CVD administrative review[22] and deducted this amount from the weighted-average dumping margin assigned to tenKsolar.[23] The

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

[11] *See Initiation Notice,* 81 FR at 44261–2.

[12] *Id.*

[13] *See* Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Certification, dated August 3, 2016.

[14] *See* Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Withdrawal as a Mandatory Respondent, dated February 14, 2017.

[15] *See Initiation Notice,* 81 FR at 44262 (''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.'').

[16] *See* tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Certification, dated August 3, 2016.

[17] *See* tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Section A Questionnaire Response, dated February 23, 2017; *see also* tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Section C and D Questionnaire Response, dated March 9, 2017.

[18] *See* Preliminary Decision Memorandum at 14.

[19] *See* Department Letter to Liu Fang, First Secretary, Embassy of the People's Republic of China, dated December 2, 2016. *See also* Memorandum, ''Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Issuance of Quantity and Value Questionnaire to the PRC-wide Entity,'' dated December 8, 2016 (containing Federal Express shipment and delivery confirmation).

[20] *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, 65970 (November 4, 2013).

[21] The petitioner is the Aluminum Extrusions Fair Trade Committee, composed of the following members: Aerolite Extrusion Company; Alexandria Extrusion Company; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futura Industries Corporation; Hydro Aluminum North America, Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; and Western Extrusions Corporation.

[22] *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 81 FR 92778 (December 20, 2016).

[23] *See* Preliminary Decision Memorandum, at 12 and 17–18.

adjusted rate for tenKsolar is 85.96 percent.

Pursuant to section 772(c)(1)(C) of the Act, we also made an adjustment for countervailable export subsidies for the PRC-wide entity. We adjusted the PRC-wide entity cash deposit rate by the lowest countervailable export subsidy determined for the mandatory respondents in the 2014 (*i.e.,* most recently completed) CVD administrative review.[24]

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the 2015–2016 POR:

Exporter	Weighted-average dumping margin (percent)	Margin adjusted for liquidation and cash deposit purposes (percent)
tenKsolar (Shanghai) Co., Ltd. ...	86.01	85.96
PRC-wide Entity	86.01	85.96

Additionally, as explained above, the Department preliminarily determines that the following companies are part of the PRC-wide entity: (1) Kam Kiu; (2) Atlas Integrated Manufacturing Ltd.; (3) Classic & Contemporary Inc.; (4) Dongguan Golden Tiger Hardware Industrial Co., Ltd.; (5) Jiaxing Jackson Travel Products Co., Ltd.; (6) Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; (7) Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.; (8) Sincere Profit Limited; and (9) Suzhou New Hongji Precision Part Co.

Disclosure and Public Comment

Normally, the Department discloses to interested parties the calculations performed in connection with its preliminary results within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because the Department did not calculate weighted-average dumping margins for either of the individually examined companies, Kam Kiu and tenKsolar, in this review, nor for the PRC-wide entity, there are no calculations to disclose.

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[25] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[26] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[27]

Any interested party may request a hearing within 30 days of publication of this notice.[28] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[29]

All submissions, with limited exceptions, must be filed electronically using ACCESS.[30] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[31]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[32] The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate. Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.[33]

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). We will instruct CBP accordingly.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties, when imposed, will apply to all shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review, as adjusted for domestic and export subsidies (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; (4) for the PRC-wide entity, the cash deposit rate will be 85.96 percent;[34] and (5) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

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

Notification to Importers

This notice also serves as a preliminary reminder to importers of

[24] *See* Preliminary Decision Memorandum.

[25] *See* 19 CFR 351.309(c)(1)(ii).

[26] *See* 19 CFR 351.309(d).

[27] *See* 19 CFR 351.309(c)(2) and (d)(2).

[28] *See* 19 CFR 351.310(c).

[29] *See* 19 CFR 351.310(d).

[30] *See generally* 19 CFR 351.303.

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

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

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

[34] This rate is adjusted for export subsidies.

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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing notice of these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 31, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum:

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IV. Respondent Selection
V. Rescission of Administrative Review in Part
VI. Preliminary Determination Regarding tenKsolar's Reported Sales
VII. NME Country
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X. Application of Facts Available and Use of Adverse Inference
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Appendix II

Companies for Which This Administrative Review Is Being Rescinded

1. Acro Import and Export Co.
2. Activa International Inc.
3. Allied Maker Limited
4. Alnan Aluminium Co., Ltd.
5. Aluminicaste Fundicion de Mexico
6. AMC Ltd.
7. Belton (Asia) Development Ltd.
8. Birchwoods (Lin'an) Leisure Products Co., Ltd.
9. Bolnar Hong Kong Ltd.
10. Bracalente Metal Products (Suzhou) Co., Ltd.
11. Changshu Changshen Aluminium Products Co., Ltd.
12. Changzhou Changzheng Evaporator Co., Ltd.
13. Changzhou Tenglong Auto Parts Co., Ltd.
14. China Square
15. China Square Industrial Co.
16. China Zhongwang Holdings, Ltd.
17. Chiping One Stop Industrial & Trade Co., Ltd.
18. Clear Sky Inc.
19. Cosco (J.M.) Aluminium Co., Ltd.
20. Dalian Huacheng Aquatic Products
21. Dalian Liwang Trade Co., Ltd.
22. Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.
23. Dongguan Aoda Aluminum Co., Ltd.
24. Dongguan Dazhan Metal Co., Ltd.
25. Dragonluxe Limited
26. Dynabright Int'l Group (HK) Limited
27. Dynamic Technologies China Ltd.
28. Ever Extend Ent. Ltd.
29. Fenghua Metal Product Factory
30. First Union Property Limited
31. FookShing Metal & Plastic Co. Ltd.
32. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
33. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
34. Foshan Golden Source Aluminum Products Co., Ltd.
35. Foshan Guangcheng Aluminium Co., Ltd.
36. Foshan Jinlan Aluminum Co. Ltd.
37. Foshan JMA Aluminum Company Limited
38. Foshan Sanshui Fenglu Aluminium Co., Ltd.
39. Foshan Shunde Aoneng Electrical Appliances Co., Ltd.
40. Foshan Yong Li Jian Aluminum Co., Ltd.
41. Fujian Sanchuan Aluminum Co., Ltd.
42. Fuzhou Sunmodo New Energy Equipment
43. Genimex Shanghai, Ltd.
44. Global PMX Dongguan Co., Ltd.
45. Global Point Technology (Far East) Limited
46. Gold Mountain International Development Limited
47. Golden Dragon Precise Copper Tube Group, Inc.
48. Gran Cabrio Capital Pte. Ltd.
49. Gree Electric Appliances
50. GT Capital Pte. Ltd.
51. Guang Ya Aluminium Industries (Hong Kong) Ltd.
52. Guang Ya Aluminium Industries Co., Ltd.
53. Guangdong Hao Mei Aluminium Co., Ltd.
54. Guangdong Jianmei Aluminum Profile Company Limited
55. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
56. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
57. Guangdong Weiye Aluminum Factory Co., Ltd.
58. Guangdong Whirlpool Electrical Appliances Co., Ltd.
59. Guangdong Xingfa Aluminium Co., Ltd.
60. Guangdong Xin Wei Aluminum Products Co., Ltd.
61. Guangdong Yonglijian Aluminum Co., Ltd.
62. Guangdong Zhongya Aluminum Company Limited
63. Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.
64. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
65. Hangzhou Xingyi Metal Products Co., Ltd.
66. Hanwood Enterprises Limited
67. Hanyung Alcoba Co., Ltd.
68. Hanyung Alcobis Co., Ltd.
69. Hanyung Metal (Suzhou) Co., Ltd.
70. Hao Mei Aluminum Co., Ltd.
71. Hao Mei Aluminum International Co., Ltd.
72. Hebei Xusen Wire Mesh Products Co., Ltd.
73. Henan New Kelong Electrical Appliances Co., Ltd.
74. Hong Kong Gree Electric Appliances Sales Limited
75. Hong Kong Modern Non-Ferrous Metal
76. Honsense Development Company
77. Hui Mei Gao Aluminum Foshan Co., Ltd.
78. IDEX Dinglee Technology (Tianjin) Co., Ltd.
79. IDEX Technology Suzhou Co., Ltd.
80. IDEX Health
81. Innovative Aluminium (Hong Kong) Limited
82. iSource Asia
83. Jackson Travel Products Co., Ltd.
84. Jangho Curtain Wall Hong Kong Ltd.
85. Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.
86. Jiangmen Jianghai Foreign Ent. Gen.
87. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
88. Jiangsu Changfa Refrigeration Co., Ltd.
89. Jiangyin Suncitygaylin
90. Jiangyin Trust International Inc.
91. Jiangyin Xinhong Doors and Windows Co., Ltd.
92. Jiaxing Taixin Metal Products Co., Ltd.
93. Jiuyan Co., Ltd.
94. JMA (HK) Company Limited
95. Justhere Co., Ltd.
96. Kanal Precision Aluminum Product Co., Ltd.
97. Karlton Aluminum Company Ltd.
98. Kong Ah International Company Limited
99. Kromet International, Inc.
100. Kunshan Giant Light Metal Technology Co., Ltd.
101. Liaoning Zhongwang Group Co., Ltd.
102. Liaoyang Zhongwang Aluminum Profile Co. Ltd.
103. Longkou Donghai Trade Co., Ltd.
104. Metaltek Group Co., Ltd.
105. Metaltek Metal Industry Co., Ltd.
106. Midea Air Conditioning Equipment Co., Ltd.
107. Midea International Trading Co., Ltd.
108. Midea International Training Co., Ltd.
109. Miland Luck Limited
110. Nanhai Textiles Import & Export Co., Ltd.
111. New Asia Aluminum & Stainless Steel Product Co., Ltd.
112. New Zhongya Aluminum Factory
113. Nidec Sankyo (Zhejang) Corporation
114. Nidec Sankyo Singapore Pte. Ltd.
115. Ningbo Coaster International Co., Ltd.
116. Ningbo Hi Tech Reliable Manufacturing Company
117. Ningbo Ivy Daily Commodity Co., Ltd.
118. Ningbo Yili Import and Export Co., Ltd.
119. North China Aluminum Co., Ltd.
120. North Fenghua Aluminum Ltd.
121. Northern States Metals
122. PanAsia Aluminium (China) Limited
123. Pengcheng Aluminum Enterprise Inc.
124. Permasteelisa Hong Kong Limited
125. Permasteelisa South China Factory
126. Pingguo Aluminum Company Limited
127. Pingguo Asia Aluminum Co., Ltd.
128. Popular Plastics Co., Ltd.
129. Press Metal International Ltd.
130. Samuel, Son & Co., Ltd.
131. Sanchuan Aluminum Co., Ltd.
132. Shangdong Huasheng Pesticide Machinery Co.

133. Shangdong Nanshan Aluminum Co., Ltd.
134. Shanghai Automobile Air Conditioner Accessories Ltd.
135. Shanghai Canghai Aluminum Tube Packaging Co., Ltd.
136. Shanghai Dongsheng Metal
137. Shanghai Shen Hang Imp & Exp Co., Ltd.
138. Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.
139. Shenzhen Hudson Technology Development Co.
140. Shenzhen Jiuyuan Co., Ltd.
141. Sihui Shi Guo Yao Aluminum Co., Ltd.
142. Skyline Exhibit Systems (Shanghai) Co., Ltd.
143. Southwest Aluminum (Group) Co., Ltd.
144. Suzhou JRP Import & Export Co., Ltd.
145. Tai-Ao Aluminium (Taishan) Co., Ltd.
146. Taizhou Lifeng Manufacturing Co., Ltd.
147. Taizhou Lifeng Manufacturing Corporation, Ltd.
148. Taizhou United Imp. & Exp. Co., Ltd.
149. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
150. Tianjin Jinmao Import & Export Corp., Ltd.
151. Tianjin Ruixin Electric Heat Transmission Technology, Ltd.
152. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
153. Tiazhou Lifeng Manufacturing Corporation
154. Top-Wok Metal Co., Ltd.
155. Traffic Brick Network, LLC
156. Union Aluminum (SIP) Co.
157. Union Industry (Asia) Co., Ltd.
158. USA Worldwide Door Components (PINGHU) Co., Ltd.
159. Wenzhou Shengbo Decoration & Hardware
160. Whirlpool (Guangdong)
161. Whirlpool Canada L.P.
162. Whirlpool Microwave Products Development Ltd.
163. WTI Building Products, Ltd.
164. Xin Wei Aluminum Co.
165. Xin Wei Aluminum Company Limited
166. Xinya Aluminum & Stainless Steel Product Co., Ltd.
167. Yuyao Fanshun Import & Export Co., Ltd.
168. Yuyao Haoshen Import & Export
169. Zahoqing China Square Industry Limited
170. Zhaoqing Asia Aluminum Factory Company Ltd.
171. Zhaoqing China Square Industrial Ltd.
172. Zhaoqing China Square Industry Limited
173. Zhaoqing New Zhongya Aluminum Co., Ltd.
174. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
175. Zhejiang Yongkang Listar Aluminium Industry Co., Ltd.
176. Zhejiang Zhengte Group Co., Ltd.
177. Zhenjiang Xinlong Group Co., Ltd.
178. Zhongshan Daya Hardware Co., Ltd.
179. Zhongshan Gold Mountain Aluminium Factory Ltd.
180. Zhongya Shaped Aluminium (HK) Holding Limited
181. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

[FR Doc. 2017–11665 Filed 6–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stilbenic optical brightening agents (OBAs) from Taiwan. The period of review (POR) is May 1, 2015, through April 30, 2016. The review covers one producer/exporter of the subject merchandise, Teh Fong Ming International Co., Ltd. (TFM). We preliminarily find that TFM has not sold subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results.

DATES: Effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the *Order*[1] is OBAs and is currently classifiable under subheadings 3204.20.8000, 2933.69.6050, 2921.59.4000 and 2921.59.8090 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[2]

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, the Department has relied on partial adverse facts available under sections 776(a) and (b) of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum 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 to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of Review

We preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for TFM for the period May 1, 2015, through April 30, 2016.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary results.[3]

Public Comment

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a

[1] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (*Order*).

[2] A full description of the scope of the *Order* is contained in the Memorandum, ''Certain Stilbenic Optical Brightening Agents from Taiwan: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance. All documents must be filed electronically using ACCESS which is available to registered users at *http://access.trade.gov.* An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[6] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuance of the final results, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries covered by this review. If TFM's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[7] If TFM's weighted-average dumping margin continues to be zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.[8]

For entries of subject merchandise during the POR produced by TFM for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of OBAs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for TFM will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.19 percent.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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 antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: May 31, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

Summary
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B. Results of the Differential Pricing Analysis
Product Comparisons
Date of Sale
Constructed Export Price
Use of Partial Facts Otherwise Available
A. Background
B. Application of Facts Available with an Adverse Inference
Normal Value
A. Home Market Viability and Comparison Market
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C. Level of Trade
D. Calculation of Normal Value Based on Comparison Market Prices
E. Calculation of Normal Value Based on Constructed Value
Currency Conversion
Recommendation

[FR Doc. 2017–11669 Filed 6–5–17; 8:45 am]

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[6] *See* 19 CFR 351.310(c).

[7] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[8] *See Final Modification for Reviews,* 77 FR 8102.

[9] The all-others rate established in the *Order.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Interagency Electronic Reporting System (IERS)

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 August 7, 2017.

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 Suja Hall, (907) 586–7462.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a current information collection.

eLandings, seaLandings, and tLandings are data entry components of the Alaska Interagency Electronic Reporting System (IERS), which is a collaborative program run by the National Marine Fisheries Service (NMFS) Alaska Regional Office, the Alaska Department of Fish and Game (ADF&G), and the International Pacific Halibut Commission (IPHC). eLandings, seaLandings, and tLandings provide the Alaska fishing industry with a consolidated electronic means of reporting production and landings of commercial fish and shellfish to multiple management agencies with a single reporting system. NMFS collects groundfish harvest and production data for fishery management plan species in the Exclusive Economic Zone (EEZ). ADF&G collects harvest data for groundfish species taken in State of Alaska waters and has responsibility for some fisheries in the EEZ, such as lingcod and black rockfish. ADF&G and NMFS cooperatively manage the Crab Rationalization Program fisheries in the Bering Sea and Aleutian Islands Management Area. NMFS and IPHC cooperatively manage Individual Fishing Quota (IFQ) for Pacific halibut and sablefish in both State waters and in the EEZ.

eLandings is a web-based application used by vessels and processors to report groundfish, crab, Pacific halibut, and sablefish production and landings data. Processors with limited internet access, such as the at-sea fleet, use eLandings client desktop software named seaLandings, provided by NMFS, and submit the required reports as email attachments or via direct transmit over the Internet. Once data are entered and submitted, the User must print daily through eLandings each landing report, production report, logbook report, and if an IFQ delivery, each IFQ receipt. The parties to the information must acknowledge the accuracy of the printed reports by signing them and entering the date signed. In addition, the User must make the printed copies available upon request of NMFS observers and authorized officers.

tLandings is a software application for tender vessels that records landings data on a USB flash drive and creates a printable fish ticket. The fish ticket is printed on board the tender vessel and signed by the delivering catcher vessel operator. When the tender vessel delivers to the shoreside processor, the shoreside processor uploads the landing information on the USB flash drive into eLandings.

Some of the benefits of IERS include improved data quality, automated processing of data, improved process for correcting or updating information, availability of more timely data for fishery managers, and reduction of duplicative reporting of similar information to multiple agencies.

II. Method of Collection

Methods of submittal include online and email. Clients with limited internet access, such as the at-sea fleet, use seaLandings client desktop software and submit landing reports as email attachments or over the Internet. The vessels use satellite communications, which may or may not include telephone, Internet, text messaging, email, and email attachment capabilities.

III. Data

OMB Control Number: 0648–0515.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit; individuals or households.

Estimated Number of Respondents: 273.

Estimated Time per Response: 35 minutes for a tLandings landing report; 30 minutes for catcher/processor eLandings landing report; 18 minutes for active response and 5 minutes for inactive response for pilot catcher vessel trawl electronic logbook (eLog); 15 minutes for active response and 5 minutes for inactive response for catcher vessel eLog, catcher/processor eLog and mothership eLog; 15 minutes for eLandings registration; 10 minutes for eLandings/seaLandings landing report; and 20 minutes for at-sea response; and 10 minutes for shoreside and stationary floating processor response for eLandings/seaLandings production report.

Estimated Total Annual Burden Hours: 16,865.

Estimated Total Annual Cost to Public: $2,870 in recordkeeping/reporting costs.

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.

Dated: June 1, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–11628 Filed 6–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Vessel Monitoring System (VMS) Program

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 August 7, 2017.

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 Scott Miller, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Vessel Monitoring System (VMS) units integrate global positioning system (GPS) and communications electronics into a single, tamper-resistant package to automatically determine the vessel's position several times per hour. The units can be set to transmit a vessel's location periodically and automatically to an overhead satellite in real time. In most cases, the vessel owner is unaware

of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to the National Marine Fisheries Service (NMFS) Office of Law Enforcement and the U.S. Coast Guard. Enforcement of management measures, such as directed fishing closures and critical habitat no-fishing zones, relies heavily on the use of VMS.

II. Method of Collection

Automatic GPS position reporting starts after VMS transceiver installation and power activation on board the vessel. The unit is pre-configured and tested for NMFS VMS operations. Vessel operators who purchase and install a VMS on a vessel must fax a one-time VMS check-in report to NMFS. Thereafter, submittal is automatic by satellite.

III. Data

OMB Control Number: 0648–0445.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 83.

Estimated Time per Response: 12 minutes for VMS check-in report; 2 hours for VMS operation (includes installation and maintenance).

Estimated Total Annual Burden Hours: 130.

Estimated Total Annual Cost to Public: $67,793 in recordkeeping/reporting costs.

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.

Dated: June 1, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–11627 Filed 6–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF411

Taking of Marine Mammals Incidental to Specified Activities; Dismantling of the Original East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an incidental take authorization to take small numbers of six species of marine mammals, by harassment, incidental to the dismantling of the original East Span of the San Francisco-Oakland Bay Bridge (SFOBB) in the San Francisco Bay (SFB), California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than July 6, 2017.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Youngkin@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.,* name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of references cited in this document, may be obtained at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has

the potential to disturb a marine mammal stock in the wild by causing disruption of behavioral patterns including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On April 5, 2017, CALTRANS submitted a request to NMFS for an IHA to take marine mammals incidental to the dismantling of the original East Span of the SFOBB in the San Francisco Bay. On May 1, 2017, NMFS deemed the application adequate and complete. CALTRANS requested authorization for incidental take by harassment only and NMFS concurs that mortality is not expected to result from this activity. NMFS is proposing to issue an IHA that will authorize take by Level B harassment of Pacific harbor seal, California sea lion, northern elephant seal, northern fur seal, harbor porpoise, and bottlenose dolphin incidental to CALTRANS' activities. As described in the Overview section, previous IHAs have been issued to CALTRANS for similar activities, specifically for the use of mechanical dismantling and controlled blasts to implode piers of the original East Span of the SFOBB.

Description of the Specified Activity

Overview

CALTRANS proposes removal of the original East Span of the SFOBB by mechanical dismantling and by use of controlled charges to implode 13 piers (Piers E6–E18) into their open cellular chambers below the mudline. Activities associated with dismantling the original East Span may potentially result in incidental take of marine mammals due to the use of highly controlled charges to dismantle the marine foundations of the piers.

Several previous one-year IHAs have been issued to CALTRANS for pile driving/removal and construction of the new SFOBB East Span beginning in 2003. NMFS has issued 10 IHAs to CALTRANS for the SFOBB Project. The first five IHAs (2003, 2005, 2007, 2009, and 2011) addressed potential impacts associated with pile driving for the construction of the new East Span of the SFOBB. IHAs issued in 2013, 2014 and July 2015 addressed activities associated with both constructing the new East Span and dismantling the original East Span, specifically addressing vibratory pile driving, vibratory pile extraction/removal, attenuated impact pile driving, pile proof testing, and mechanical dismantling of temporary and permanent marine foundations. On September 9, 2015, NMFS issued an IHA to CALTRANS for incidental take associated with the demolition of Pier E3 of the original SFOBB by highly controlled explosives (80 FR 57584; September 24, 2015). On September 30, 2016, NMFS issued an IHA authorizing the incidental take of marine mammals associated with both pile driving/removal and controlled implosion of Piers E4 and E5 (81 FR 67313). CALTRANS is requesting this IHA to continue dismantling the original East Span of the SFOBB using mechanical means as well as five to six implosion events to dismantle 13 piers (Piers E6–E18). CALTRANS does not anticipate any further in-water pile installation or pile removal for the SFOBB project, and is not requesting coverage under this IHA to conduct pile driving/removal activities.

Dates and Duration

The demolition of Piers E6 through E18 through controlled implosion are planned to begin in September 2017. Implosion events would consist of the use of highly controlled charges to implode 1 to 4 piers per event, amounting to a total of 5 to 6 implosion events to dismantle the 13 piers (Piers E6–E18). CALTRANS is requesting issuance of an IHA for a period of one year. Therefore, an IHA, if issued, would cover the period from September 1, 2017 through August 31, 2018.

Specified Geographic Region

The SFOBB project area is located in the central San Francisco Bay (SFB or Bay), between Yerba Buena Island (YBI) and the city of Oakland. The western limit of the project area is the east portal of the YBI tunnel, located in the city of San Francisco. The eastern limit of the project area is located approximately 1,312 feet (ft) (400 meters (m)) west of the Bay Bridge toll plaza, where the new and former spans connect with land at the Oakland Touchdown (OTD) in the city of Oakland.

Detailed Description of the Specified Activities

CALTRANS proposes the removal of Piers E6 through E18 (13 piers) of the original East Span by use of mechanical dismantling and controlled charges to implode each pier into its open cellular chambers below the mudline. A Blast Attenuation System (BAS) will be used to minimize potential impacts on biological resources in the Bay. Both NMFS and CALTRANS believe that the results from the 2015 Pier E3 Demonstration Project implosion, as well as the results from the 2016 implosions of Piers E4 and E5, support the use of controlled charges as a more expedient method of removal that will cause less environmental impact compared to mechanical methods using a dry (fully dewatered) cofferdam.

Piers E6 through E18 of the original East Span are located between the OTD area and YBI, and just south of the SFOBB new East Span. These piers consist of lightly reinforced concrete cellular structures that are supported by timber piles driven into the Bay mud and occupy areas below the mudline, within the water column, and above the water line of the Bay. Unlike Piers E3, E4, and E5, which were dismantled using highly controlled charges previously, Piers E6 through E18 do not extend deep below the mudline. The timber piles and concrete slabs that are below approved removal limits will remain in place. Piers E6, E7, and E8 supported the 504-ft bridge spans of the original SFOBB. Pier E9 is located at the connection point between the 504-ft bridge spans and the 288-ft bridge spans. Piers E10 through E18 supported the original SFOBB 288-ft bridge spans.

The use of controlled charges would greatly reduce in-water work periods and shorten the overall duration of marine foundation removal compared with mechanical removal. Because of the similar structures for each pier, each would be removed following the same five steps:

- Mechanical dismantling of the pier cap and concrete pedestals;
- Drilling bore holes into the marine foundation;
- Installing and testing the BAS;
- Installing charges, activating the BAS, and imploding the pier; and
- Managing and removing remaining dismantling debris.

Details of these steps are provided below.

Mechanical Dismantling of Concrete Pedestals and Pier Caps

For all piers, support barges will be used to move hydraulic excavators equipped with hoe rams, shearing attachments, drills, saws, and other equipment including cutting lances and torches to be used during the mechanical dismantling. A barge-mounted crane will be used to move equipment onto and off each pier.

For all piers, the concrete pedestals and pier cap will be removed by mechanical means using tools including those listed above to break the concrete structure to pieces. Concrete rubble and rebar will be managed using excavators and cranes that will be mounted with buckets. Throughout concrete dismantling operations on each pier, support platforms will be installed to provide a working surface for the

excavators to dismantle the upper portion of the pier. The support platforms will be made up of timber crane mats. A debris catchment system, accepted by the San Francisco Regional Water Quality Control Board, will be in place to contain concrete debris from discharging into the Bay during dismantling operations.

All concrete rubble from mechanical dismantling of concrete pedestals will be taken off-site for disposal. Rubble will be loaded onto receiving barges to be taken to Berth 9 in the Port of Oakland to be sorted and disposed of at an approved upland facility. The pier caps covering the central chambers will be dismantled last and will be broken with a ram hoe. The broken pier caps will remain in the hollow void during the controlled blasting, and all other mechanical dismantling activities would occur above the waterline.

Drill Boreholes

After the mechanical dismantling operations are complete, access platforms will be installed on top of each pier to support the drilling equipment. The exposed interior cell walls, buttress walls, and outside walls will be drilled from the top down, to remove concrete and create boreholes to just below the controlled blasting removal limit for each pier. Boreholes that are drilled in areas that are inundated with water (*i.e.,* to the buttress walls and concrete slabs) will be done using a drill bit working within a tubular casing for guidance and to provide containment during in-water work. Monitoring will be performed to minimize and avoid impacts on water quality during this activity.

Pier 9 has additional buttress walls compared to other piers. Drilling holes for buttress walls on Pier 9 will be done by the same method that was used for the buttress wall of Pier 3 (Demonstration Project). Divers will cut notches into the buttress walls and will install conduit to the work platform on top of the pier. The drilling will be done within the casings from the work platform.

Blast Attenuation System (BAS) Installation and Deployment

The BAS that will be used at Piers E6 to E 18 is the same system that was successfully used for Piers E3 (Demonstration Project), E4, and E5. The BAS is a modular system of pipe manifold frames, placed around each pier and fed by air compressors to create a curtain of air. The BAS will be activated before and during implosion. As shown during previous implosions, the BAS will help minimize noise and pressure waves generated during each controlled blast, to minimize potentially adverse effects on biological resources. Each BAS frame is approximately 50.5 ft (15.4 m) long by 6 ft (1.8 m) wide. The BAS to be used at Piers E6 through E18 will be same system that was used at Piers E3, E4, and E5, and will meet the same specifications.

To remove the 13 pier foundations of Piers E6 through E18 in 2017, multiple pier implosions may be performed on the same day, sequentially. Smaller piers will be combined into single blast events. The implosion of each pier within the blast events will be spaced 1 to 5 seconds apart. All pier implosion events involving multiple piers will use fewer explosives and will have shorter blast durations than the previous implosion of Pier E3. Up to 2 piers that formerly supported either the 504-foot spans of the bridge may be imploded on the same day. Two to four small piers (that formerly supported the 288-foot spans) may be imploded on the same day. A total of five to six pier implosion events, consisting of the implosion of one to four piers per event, may be required. An individual BAS will be installed around each pier included in a multiple-pier implosion event.

The complete BAS will be installed and tested during the weeks leading up to each controlled blast. Before installing the BAS, CALTRANS will move any existing debris on the Bay floor that may interrupt proper installation of the BAS. Existing debris identified as a risk to proper installation of the BAS will be moved outside the path of the BAS layout. Each BAS frame will be lowered to the bottom of the Bay by a barge-mounted crane and positioned into place. Divers will be used to assist frame placement, and to connect air hoses to the frames. Frames will be situated to contiguously surround the pier. Each frame will be weighted to negative buoyancy for activation. Compressors will provide enough pressure to achieve a minimal air volume fraction of three to four percent, consistent with the successful use of BAS systems in past controlled blasting activities, including Pier E3 (CALTRANS 2016 and CALTRANS 2017). System performance is anticipated to provide 70 to 80 percent sound and pressure attenuation, based on the results from the previous controlled blasting activities (CALTRANS 2016, 2017).

Test Blasts

At the beginning of the implosion season, test blasts will be conducted within the completely installed and operating BAS so that the hydroacoustic monitoring equipment will be properly triggered and functional before each pier implosion event. A key requirement of the implosion involves accurately capturing hydroacoustic information from the controlled blast. To accomplish this, a smaller test charge will be used to trigger recording instrumentation. Multiple test blast events may be required to verify proper instrument operation and calibrate the equipment for the implosion event. These same instruments and others of the same type will use high-speed recording devices to capture hydroacoustic data at both near-field and far-field monitoring locations during the implosion.

Test charges will be scheduled to occur within two weeks of the first implosion scheduled for the implosion season and after the BAS is positioned into place and is functional. Additional test blasts may be needed prior to subsequent implosion events to ensure triggering of the data acquisition and recording instruments as well as calibration of the equipment. The BAS will be operational during all tests. Tests will use a charge weight of approximately 18 grains (0.0025 pound) or less. The test charge will be placed along one of the longer faces of the pier and inside the BAS while it is operating. Results from test blasts that occurred during the Piers E3–E5 indicate that these test blasts did not reach or exceed marine mammal threshold criteria beyond the bubble flux of the BAS (See Appendix A of the IHA application and CALTRANS 2016). Therefore, no take of marine mammals is anticipated due to test blasts.

Controlled Implosion of Piers E6 Through E18

Before pier removal via controlled blasting, the bore holes in the pier will be loaded with controlled charges. Individual cartridge charges, using electronic blasting caps versus pumpable liquid blasting agents, have been selected to provide greater control and accuracy in determining the individual and total charge weights. Use of individual cartridges will allow a refined blast plan that efficiently breaks concrete while minimizing the amount of charges needed.

Boreholes will vary in diameter and depth, and have been designed to provide optimal efficiency in transferring the energy created by the controlled charges to dismantle the pier. Individual charge weights will vary from 20 to 35 pounds (lbs) (9 to 16 kilograms (kg)), and the total charge weight for each controlled blast event will be approximately 2,132 to 15,800 lbs (967 to 7,167 kg). Depending on the

location, size, and removal limit of the pier to be removed, the total number of individual charges to be used will range from approximately 100 to 455. The charges will be arranged in different levels (decks) and will be separated in boreholes by stemming, which is the insertion of inert materials (*e.g.,* sand or gravel) to insulate and retain charges in an enclosed space. Stemming will allow more efficient transfer of energy into the structural concrete for fracture, and will further reduce the release of potential energy into the surrounding water column. The entire detonation sequence, consisting of approximately 100 to 455 detonations, will last approximately 1 to 4 seconds for each pier with a minimum delay time of 9 milliseconds (msec) between detonations.

Controlled blasting of Pier E6 will remove concrete by blasting down through the concrete slab and top 3 ft (1 m) of the concrete seal. Controlled blasting of Pier E7 will remove concrete by blasting down through the concrete slab but not the concrete seal. Controlled blasting of Piers E8 through E18 will remove concrete by blasting down through the concrete cellular structure, but not through the concrete slab, seal, and timber piles below. For Pier E6, site conditions will require the pier to be blasted further into the structure to remove the upper 3 ft (1 m) of the concrete seal and remove the structure to the approved removal elevation. Remaining concrete seals and timber piles below the mudline will not be removed.

As stated above, to remove the 13 marine foundations of Piers E6 through E18 in the 2017 season, multiple pier implosions may be performed on the same day, sequentially. Smaller piers will be combined into single blast events. All pier implosion events involving multiple piers will use fewer explosives and will have a shorter total blast duration than the previous implosion of Pier E3.

Debris Removal and Site Restoration

Following the controlled implosion event and confirmation that the area is safe to work in, construction crews will begin to remove all associated equipment, including barges, compressors, the BAS, and blast mats. CALTRANS expects that a small portion of rubble from each pier will fall outside its respective footprint and/or mound within the footprint of each pier, and will need to be managed after each controlled implosion. The portions of each pier that do not break apart during controlled blasting and remain above the removal limits will be demolished by mechanical means. This may require the use of underwater mechanical equipment, including hydraulic crushing or grinding machinery or diver-operated jackhammers.

Rubble from the controlled implosion of Piers E6 through E18 will be removed down to each pier's respective planned debris removal limit elevation by barge-mounted crane with a clamming bucket. The clamming bucket will be equipped with a GPS unit to accurately guide the movement of the bucket during underwater operation. The planned debris removal limit elevations are shown in Table 1.

TABLE 1—APPROXIMATE MUDLINE AND REMOVAL ELEVATIONS OF SFOBB ORIGINAL EAST SPAN MARINE FOUNDATIONS

Pier	Mudline elevation (feet)	Required removal elevation (1.5 ft below mudline; ft)	Planned removal limits (3 ft below mudline; ft)
E6	−40.0	−41.5	−43.0
E7	−28.0	−29.5	−31.0
E8	−19.0	−20.5	−22.0
E9	−17.5	−19.0	−20.5
E10	−18.0	−19.5	−21.0
E11	−14.0	−15.5	−17.0
E12	−14.0	−15.5	−17.0
E13	−14.0	−15.5	−17.0
E14	−15.0	−16.5	−18.0
E15	−12.5	−14.0	−15.5
E16	−12.5	−14.0	−15.5
E17	−12.5	−14.0	−15.5
E18	−12.5	−14.0	−15.5

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of the Specified Activity

Seven species, representing seven stocks, of marine mammals may be affected by the SFOBB project. The two most common species observed are the Pacific harbor seal (*Phoca vitulina richardii*) and the California sea lion (*Zalophus californianus*). Juvenile northern elephant seals (*Mirounga angustirostris*) seasonally enter the Bay (spring and fall), while harbor porpoises (*Phocoena phocoena*) may enter the western side of the Bay throughout the year, but rarely occur near the SFOBB east span. Gray whales (*Eschrichtius robustus*) may enter the Bay during their northward migration in the late winter and spring, but are unlikely to occur near the project area during September, October, and November when pier implosions would take place. Therefore, no take of gray whales from the proposed pier implosions was requested, and NMFS is not proposing to authorize take of gray whales. In addition, though rare, northern fur seals (*Callorhinus ursinus*) and bottlenose dolphins (*Tursiops truncatus*) have also been sighted in the Bay. None of these species are listed as endangered or threatened under the Endangered Species Act (ESA), or as depleted or a strategic stock under the MMPA.

We have reviewed CALTRANS' species information, which summarizes available information regarding status and trends, distribution, and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species, for accuracy and completeness. We refer the reader to Chapters 3 and 4 of the CALTRANS IHA application as well as to NMFS' Stock Assessment Reports (SR; *www.nmgs.noaa/.gov/pr/sars/*), for detailed information. Additional general information about these species and

stocks (*e.g.,* physical and behavioral descriptions) may be found on NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*). Table 2 lists all species and stocks with potential for occurrence in the San Francisco Bay and summarizes information related to the species or stock, including potential biological removal (PBR). 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. PBR is considered in concert with the known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR information is included here as a gross indicator of the status of the species and other threats.

Gray whales are a species that could potentially occur in the proposed survey area but are not expected to have reasonable potential to be harassed by CALTRANS' SFOBB actions because they are unlikely to occur in the project area, as discussed above. This species is included in Table 2 but is omitted from further analysis. For species status, we provide information regarding U.S. regulatory status under the MMPA and ESA in Table 2.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Common name	Scientific name	ESA/ MMPA status	Occurrence	Seasonality	Range	Stock abundance	Potential biological removal (PBR)
Harbor seal (CA stock)	*Phoca vitulina richardii*	NL/ND	Common	Year round	California	30,968	1,641
California sea lion (US stock)	*Zalophus californianus*	NL/ND	Common	Year round	California	296,750	9,200
Northern fur seal (CA stock)	*Callorhinus ursinus*	NL/ND	Rare	Year round	California	12,844	451
Northern elephant seal (CA breeding stock).	*Mirounga angustirostris*	NL/ND	Occasional	Spring & fall	California	179,000	4,882
Gray whale (Eastern north Pacific stock).	*Eschrichtius robustus*	NL*/ND	Rare	Spring & fall	Mexico to the U.S. Arctic Ocean.	20,990	624
Harbor porpoise (SF-Russian River stock).	*Phocoena phocoena*	NL/ND	Rare	Year round	California	9,886	66
Coastal Bottlenose dolphin (CA coastal stock).	*Tursiops truncatus*	NL/ND	Rare	Year round	California	323	2.4

NL = Not Listed; * The E. North Pacific population is not listed under the ESA.; ND = Not Depleted under the MMPA.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section will consider the context 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.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. In August 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2016 Acoustic Technical Guidance). Under the NMFS 2016 Acoustic Technical Guidance, there are five marine mammal hearing group categories, with associated generalized hearing ranges as shown in Table 3 (note that animals are less sensitive to sounds at the outer edge of their generalized hearing range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range).

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2016)

Hearing group	Generalized hearing range [1]
Low-frequency (LF) cetaceans (baleen whales).	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales).	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus* cruciger & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds underwater (PW) (true seals).	50 Hz to 86 kHz.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2016)—Continued

Hearing group	Generalized hearing range [1]
Otariid pinnipeds underwater (OW) (sea lions and fur seals).	60 Hz to 39 kHz.

[1] Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

As mentioned previously, six marine mammal species (two cetacean and four pinniped species) are likely to be incidentally taken by the proposed SFOBB controlled pier implosions. Of the two cetacean species, one belongs to the MF cetacean (bottlenose dolphin) hearing group, and one to the HF cetacean hearing group (harbor porpoise). Two species of pinniped are phocid (Pacific harbor seal and northern elephant seal), and two species of pinniped are otariid (California sea lion and northern fur seal). A species' hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

General Information on Potential Effects

Explosives are impulsive sounds, which are characterized by short duration, abrupt onset, and rapid decay. The proposed CALTRANS SFOBB work using controlled charges (*i.e.,* implosion events) could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area. Based on the nature of the other activities associated with the dismantling of Piers E6 through E18 of the original SFOBB East Span (mechanical dismantling) and measured sound levels from those activities during past monitoring associated with previous IHAs, NMFS does not expect activities other than implosion events to contribute to underwater noise levels such that take of marine mammals would potentially occur.

Exposure to high intensity sound for a sufficient duration may result in behavioral reactions and auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

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

For cetaceans, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Based on the best available scientific data, NMFS' 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing includes acoustic thresholds related to PTS and TTS for impulsive sounds that are expressed as weighted, cumulative sound exposure levels (SEL_{cum}) and unweighted peak sound pressure levels (SPL_{PK}), as presented in Table 4.

TABLE 4—NMFS TAKE THRESHOLDS FOR MARINE MAMMALS FROM UNDERWATER IMPLOSIONS

Group	Species	Level B harassment		Level A harassment	Serious injury		Mortality
		Behavioral	TTS	PTS	Gastro-intestinal tract	Lung	
Mid-freq cetacean ..	Bottlenose dolphin.	165 dB SEL	170 dB SEL or 224 dB SPL_{pk}.	185 dB SEL or 230 dB SPL_{pk}.	237 dB SPL ..	$39.1M^{1/3}$ $(1+[D/10.081])^{1/2}$ Pa-sec. where: M = mass of the animals in kg. D = depth of animal in m..	$91.4M^{1/3}$ $(1+[D/10.081])^{1/2}$ Pa-sec. where: M = mass of the animals in kg. D = depth of animal in m.
High-freq cetacean	Harbor porpoise	135 dB SEL	140 dB SEL or 196 dB SPL_{pk}.	155 dB SEL or 202 dB SPL_{pk}.	.....	.....	
Phocidae	Harbor seal & northern elephant seal.	165 dB SEL	170 dB SEL or 212 dB SPL_{pk}.	185 dB SEL or 218 dB SPL_{pk}.	.....	.....	
Otariidae	California sea lion & northern fur seal.	183 dB SEL	188 dB SEL or 226 dB_{pk}.	203 dB SEL or 232 dB SPL_{pk}.	.....	.....	

Note: All dB values are referenced to 1 μPa. SPL_{pk} = Peak sound pressure level; psi = pounds per square inch.

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

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking occurs when other noises, such as those from human sources, interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals

whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For CALTRANS' proposed SFOBB construction activities, noises from controlled blasting is not likely to contribute to the elevated ambient noise levels in the project area in such a way as to increasing potential for or severity of masking. Baseline ambient noise levels in the Bay are very high due to ongoing shipping, construction and other activities in the Bay, and the sound associated with the controlled blasting activities would be very brief.

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

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). For impulse noises (such as the proposed controlled implosions associated with the dismantling of the original SFOBB spans), NMFS uses received levels of 165 dB SEL to predict the onset of behavioral harassment for mid-frequency cetaceans and phocid pinnipeds (bottlenose dolphins and harbor seals and northern elephant seals, respectively); 135 dB SEP for high-frequency cetaceans (harbor porpoises); and 183 dB SEL for otariid pinnipeds (California sea lions and northern fur seals).

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

Potential Effects From Controlled Pier Implosion

It is expected that an intense impulse from the proposed controlled blasting of Piers E6 through E18 would have the potential to impact marine mammals in the vicinity of the activity. The majority of impacts would be startle behavioral responses and temporary behavioral modification of marine mammals. However, a few individual animals could be exposed to sound levels that would cause TTS.

The underwater explosion would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg 2000). Gas-containing organs, particularly the lungs and gastrointestinal (GI) tract, are especially susceptible (Goertner 1982; Hill 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten 1995). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

The above discussion concerning underwater explosions only pertains to open water detonations in a free field.

CALTRANS' demolition of Piers E6 through E18 using controlled implosion uses a confined detonation method, meaning that the charges would be placed within the structure. Therefore, most energy from the explosive shock wave would be absorbed through the destruction of the structure itself, and would not propagate through the open water. Measurements and modeling from confined underwater detonation for structure removal showed that energy from shock waves and noise impulses were greatly reduced in the water column compared to expected levels from open water detonations (Hempen *et al.,* 2007; CALTRANS 2016). Therefore, with monitoring and mitigation measures discussed below, CALTRANS' controlled implosions of Piers E6 through E18 are not likely to have injury or mortality effects on marine mammals in the project vicinity. Instead, NMFS considers that CALTRANS' proposed controlled implosions in the San Francisco Bay are most likely to cause behavioral harassment and may cause TTS in a few individual of marine mammals, as discussed below.

Changes in marine mammal behavior are expected to result from acute stress, or startle, responses. This expectation is based on the idea that some sort of physiological trigger must exist to change any behavior that is already being performed, and this may occur due to being startled by the implosion events. The exception to this expectation is the case of behavioral changes due to auditory masking (increasing call rates or volumes to counteract increased ambient noise). Masking is not likely since the CALTRANS' controlled implosion would only consist of five to six short, sequential detonations that last for approximately 3–4 seconds each.

The removal of the SFOBB East Span is not likely to negatively affect the habitat of marine mammal populations because no permanent loss of habitat will occur, and only a minor, temporary modification of habitat will occur due to the addition of sound and activity associated with the dismantling activities.

Project activities will not affect any pinniped haul-out sites or pupping sites. The YBI harbor seal haul-out site is on the opposite site of the island from the SFOBB Project area. Because of the distance and the island blocking the sound, underwater noise and pressure levels from the SFOBB Project will not reach the haul-out site. Other haul-out sites for sea lions and harbor seals are at a sufficient distance from the SFOBB Project area that they will not be affected. The closest recognized harbor seal pupping site is at Castro Rocks, approximately 8.7 miles (mi) (14 kilometers (km)) from the SFOBB Project area. No sea lion rookeries are found in the Bay.

The addition of underwater sound from SFOBB Project activities to background noise levels can constitute a potential cumulative impact on marine mammals. However, these potential cumulative noise impacts will be short in duration and would not occur in biologically important areas, would not significantly affect biologically important activities, and are not expected to have significant environmental effects, as noted in the original FHWA 2001 FEIS for the SFOBB project, incorporated by reference into NMFS' 2003 EA and subsequent Supplemental EAs (2009 and 2015) for the issuance of IHAs for the SFOBB project.

SPLs from pier implosions have the potential to injure or kill fish in the immediate area. During previous pier implosion and pile driving activities, CALTRANS reported mortality to prey species of marine mammals, including northern anchovies and Pacific herring (CALTRANS 2016), averaging approximately 200 fish per implosion event (none of which were ESA-listed species and none of which are managed under a Fishery Management Plan). These few isolated fish mortality events are not anticipated to have a substantial effect on prey species populations or their availability as a food resource for marine mammals.

Studies on explosives also suggest that larger fish are generally less susceptible to death or injury than small fish, and results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors. For example, elongated forms that are round in cross section are less at risk than deep-bodied forms; orientation of fish relative to the shock wave may also affect the extent of injury; and finally, open water pelagic fish, such as those expected to be in the project area, seem to be less affected than reef fishes.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the CALTRANS' controlled implosion events will likely be insignificant to the population as a whole.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through an IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and/or TTS for individual marine mammals resulting from exposure to noise from the controlled implosions of 13 piers of the original East Span of the SFOBB. Based on the nature of activity and past results from controlled implosions of Piers E3, E4, and E5, Level A harassment is neither anticipated nor proposed to be authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

The distance to marine mammal threshold criteria for implosion activities, and corresponding zones of influence (ZOI) have been determined based on underwater sound and pressure measurements collected during previous activities in the SFOBB Project area. The numbers of marine mammals by stock that may be taken by each type of take were calculated based on distance to the marine mammal threshold criteria, duration of the activity, and the estimated density of each stock in the ZOI. NMFS worked with CALTRANS and adjusted those estimated numbers upwards based on past monitoring data and/or other sightings data in the San Francisco Bay area to come up with a maximum number of potential occurrences for the requested takes, given that the number of marine mammals in the area is highly variable.

Estimates of Species Densities of Marine Mammals

No systematic line transect surveys of marine mammals have been performed in the San Francisco Bay. Therefore, the in-water densities of harbor seals, California sea lions, and harbor porpoises were calculated based on marine mammal monitoring conducted intermittently from 2000 to 2016 during observations made during monitoring for the SFOBB construction and demolition activities. The amount of monitoring performed per year varied depending on the frequency and duration of construction activities with the potential to affect marine mammals. During the 251 days of monitoring from 2000 through 2016 (including 15 days of baseline monitoring in 2003), 958 harbor seals, 80 California sea lions, and 9 harbor porpoises were observed within the waters of the SFOBB east span (CLATRANS, 2001, 2004, 2013, 2014, 2015, 2016, 2017). Northern elephant seal density in the project area was calculated from stranding records of the Marine Mammal Center (MMC). Too few observations or strandings of northern fur seals have occurred to determine density estimates. However, take estimates for northern fur seals were made based on stranding data, which was provided by the MMC. Similarly, too few observations of bottlenose dolphins have occurred to determine density estimates. Observations of bottlenose dolphins are primarily west of Treasure Island and concentrated along the nearshore areas of San Francisco south to Redwood City. One individual has been observed near Alameda and is thought to have likely passed by the project area, but no other reports of bottlenose dolphins exist in the project area. Therefore, bottlenose dolphin takes are based on the possibility of a few individuals potentially passing by the project area. Table 5 provides the estimated in-water densities used for calculating take of marine mammals in the SFOBB project area.

TABLE 5—ESTIMATED IN-WATER DENSITIES OF MARINE MAMMALS IN THE SFOBB PROJECT AREA

Species	Main season of occurrence	Density (animals/km²)
Pacific Harbor seal (2015–2016)	Fall–Winter	4.1
Northern elephant seal	Late Spring–Early Winter	0.03
California sea lion	Late Summer–Fall (post breeding season)	0.09
Northern fur seal	Late Fall–Early Spring	Insufficient data.
Bottlenose dolphin	Year Round	Insufficient data.
Harbor porpoise	Year Round	0.21

Notes: Pacific harbor seal, California sea lion, and harbor porpoise densities based on monitoring for the east span of SFOBB from 2000 to 2016. Elephant seal densities estimated from sighting and stranding data from MMC; A second set of Pacific harbor seal densities were estimated based on increases of sightings recorded during 2015–2016 monitoring; Insufficient sighting data exist to estimate bottlenose dolphin density. However, a single animal has been regularly observed near the SFOBB east span; Insufficient sighting data exist to estimate northern fur seal densities in the Bay. Approximately 2–4 strandings occur in the entire Bay per year (unlikely to occur in the SFOBB project area).

1. Pacific Harbor Seal Density Estimates

Most data on harbor seal populations are collected while the seals are hauled out because they are much easier to count when they are out of the water. In-water density estimates rely on haul-out counts, the percentage of seals not on shore based on radio telemetry studies, and the size of the foraging range of the population. Harbor seal density in the water can vary greatly depending on weather conditions or the availability of prey. For example, during Pacific herring runs further north in the Bay in February 2014 (outside of the hydroacoustic zone for Piers E6 to E18), very few harbor seals were observed foraging near YBI or transiting through the project area for approximately two weeks. Sightings went from a high of 27 harbor seals in one day to no seals observed (CALTRANS 2014). In 2015 and 2016, the number of harbor seals sighted in the project area increased up to 41 seals per day (CALTRANS 2015 and 2016).

Calculated harbor seal density for the proposed project is a per day estimate of harbor seals in a 1 square kilometer (km²) during the fall/winter or spring/summer season. Harbor seal density was calculated from all observations during the SFOBB project monitoring from 2000 to 2016, with a second set of density estimates for 2015–2016 to account for an increase in daily harbor seal observations during monitoring in the fall of these years. Although multiple density estimates were calculated for harbor seals, the highest density (4.1/km²) was used to calculate estimated take to be conservative.

2. California Sea Lion Density Estimates

Within the SFOBB Project area, California sea lion density was calculated from all observations of animals in the water during SFOBB Project monitoring from 2000 to 2016. These observations included data from baseline, pre, during, and post-pile driving, mechanical dismantling, onshore blasting, and offshore implosion activities. All sea lion observations within a 1 km² area were used in the estimate. Distances were recorded using a laser range finder (Bushnell Yardage Pro Elite 1500; ± 1.0 yard accuracy). Care was taken to eliminate multiple observations of the same animal, although most sea lion observations involve a single animal.

Calculated California sea lion density was a per day estimate of sea lions in 1 km² during the fall/winter or spring/summer season in Table 4. The highest density value (0.09/km²) was used to calculate estimated take in order to be conservative.

3. Northern Elephant Seal Density Estimates

Northern elephant seal density in the project area was calculated from the stranding records of the MMC, from 2004 to 2014. These data included both injured or sick seals and healthy seals. Approximately 100 elephant seals were reported in the Bay during this time; most of these hauled out and likely were sick or starving. The actual number of individuals in the Bay may have been higher because not all individuals would necessarily have hauled out. Some individuals may have simply left the Bay soon after entering because the Bay is not a usual haul-out area for elephant seals. Data from the MMC show several elephant seals stranding on Treasure Island, and one healthy elephant seal was observed resting on the beach in Clipper Cove in 2012. Elephant seal pups or juveniles also may have stranded after weaning in the spring and when they returned to California in the fall (September through November). The density estimate of 0.03 animals/km² was conservatively estimated for the entire San Francisco

Bay based on stranding data over the 10-year period from 2004–2014, and adjusting to account for the time period of the proposed SFOBB activities. However, to be conservative, the actual number of takes requested was not based on the calculated takes using the density estimate. Instead, take estimates were requested based on qualitative worst-case (and unlikely) estimates assuming six implosion events may occur and assuming presence of three northern elephant seals at half (three) of the implosion events.

4. Northern Fur Seal

Too few observations or strandings of northern fur seals have occurred to determine densities. Juveniles of this species occasionally strand in San Francisco Bay, particularly during El Nino events. During the 2016 El Nino event, northern fur seal juveniles were observed and stranded inside San Francisco Bay more frequently but were still not considered common. The MMC reported rescuing more than 80 stranded northern fur seal pups in 2015 and 2016, but only two to four northern fur seal strandings occurred in the Bay. That number is likely to decrease because the El Nino and warm water blob that affected the species' food resources has dissipated. Requested take was based on qualitative worst-case (and unlikely) estimates assuming six implosion events may occur and assuming presence of three northern fur seals at half (three) of the implosion events.

5. Common Bottlenose Dolphin Density Estimates

Too few observations of bottlenose dolphins have occurred to determine density. Observations of bottlenose dolphins primarily have occurred west of Treasure Island and were concentrated along the nearshore area of San Francisco south to Redwood City. One individual has been observed regularly near Alameda and likely passed by the project area, but no other reports of bottlenose dolphins exist in the project area (Perlman 2017). Requested take was based on qualitative worst-case (and unlikely) estimates assuming six implosion events may occur and assuming presence of three bottlenose dolphins at half (three) of the implosion events.

6. Harbor Porpoise Density Estimates

Harbor porpoise density was calculated from all observations during SFOBB Project monitoring, from 2000 to 2016. These observations included data from baseline, pre, during and post-pile driving, and onshore implosion activities. Over this period, the number of harbor porpoises that were observed entering and using the Bay increased. During the 16 years of monitoring in the SFOBB Project area, only 9 harbor porpoises were observed, and all occurred between 2006 and 2015 (including two in 2014 and 5 in 2015). Based on this data, a density estimate of 0.21 animals/km^2 was used to calculate estimated take.

Distance Calculations for Marine Mammal Threshold Criteria and Corresponding Zones of Influence (ZOI)

Utilizing the marine mammal threshold criteria from NMFS' 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2016), presented in Table 4, distances to these threshold criteria were calculated using the results from previous hydroacoustic monitoring associated with the implosions of Piers E3, E4, and E5. In addition, the criteria for lung injury and mortality to marine mammals is dependent on the mass of the animal and depth of the animal in the water column. Animals that are smaller in mass are more susceptible to injury from impulse pressures from blasting, so the mass of juveniles (6 to 16 months old) from each species was used in the calculations because these would be the smallest animals potentially exposed. As Piers E6 through E18 are in water that ranges from 10 to 40 ft (3 to 12 m), and due to the fact that the species that may be present in the project area surface frequently, and average depth of 20 ft (6 m) was used in the threshold calculations for lung injury and mortality.

Distances to marine mammal threshold criteria were calculated for each of the potential pier implosion scenarios:

- Implosion of Pier E6.
- Implosion of two 504-ft span piers in one implosion event.
- Implosion of two 288-ft span piers in one implosion event.
- Implosion of three 288-ft span piers in one implosion event.
- Implosion of four 288-ft span piers in one implosion event.

Methods used to calculate distances to threshold criteria for the implosion of multiple piers are presented in detail in Appendix C of CALTRANS' application. Table 6 presents the distances calculated to each threshold for each of the anticipated pier implosion scenarios.

TABLE 6—THRESHOLD DISTANCES (FEET) CALCULATED FOR EACH IMPLOSION SCENARIO

Group	Species	Level B harassment		Level A harassment	Serious injury		Mortality
		Behavioral	TTS (pk/SEL$_{cum}$)	PTS (pk/SEL$_{cum}$)	GI tract	Slight lung	
Implosion of Pier E6							
Mid-freq cetacean	Bottlenose dolphin	1,330	180/881	98/256	48	48	<40
High-freq cetacean	Harbor porpoise	12,567	3,127/8,358	1,697/2,459	48	48	<40
Phocidae	Harbor seal & northern elephant seal.	2,220	613/1,484	332/443	48	48	<40
Otariidae	California sea lion & northern fur seal.	554	147/367	80/106	48	48	<40
Implosion of Two 504-ft Span Piers							
Mid-freq cetacean	Bottlenose dolphin	1,055	166/685	90/190	44	<40	<40
High-freq cetacean	Harbor porpoise	10,300	2,882/6,800	1,564/1,966	44	<40	<40
Phocidae	Harbor seal & northern elephant seal.	1,790	565/1,186	306/333	44	<40	<40
Otariidae	California sea lion & northern fur seal.	421	136/274	74/78	44	<40	<40

TABLE 6—THRESHOLD DISTANCES (FEET) CALCULATED FOR EACH IMPLOSION SCENARIO—Continued

Group	Species	Level B harassment		Level A harassment	Serious injury		Mortality
		Behavioral	TTS (pk/ SEL_{cum})	PTS (pk/ SEL_{cum})	GI tract	Slight lung	
Implosion of Two 288-ft Span Piers							
Mid-freq cetacean	Bottlenose dolphin	798	166/517	90/126	44	<40	<40
High-freq cetacean	Harbor porpoise	7,700	2,882/5,140	1,564/1,493	44	<40	<40
Phocidae	Harbor seal & northern elephant seal.	1,359	565/900	306/232	44	<40	<40
Otariidae	California sea lion & northern fur seal.	304	136/185	74/52	44	<40	<40
Implosion of Three 504-ft Span Piers							
Mid-freq cetacean	Bottlenose dolphin	920	166/588	90/132	44	<40	<40
High-freq cetacean	Harbor porpoise	9,403	2,882/5,900	1,564/1,722	44	<40	<40
Phocidae	Harbor seal & northern elephant seal.	1,580	565/1,045	306/258	44	<40	<40
Otariidae	California sea lion & northern fur seal.	339	136/201	74/52	44	<40	<40
Implosion of Four 504-ft Span Piers							
Mid-freq cetacean	Bottlenose dolphin	920	166/558	90/132	44	<40	<40
High-freq cetacean	Harbor porpoise	9,935	2,882/6,590	1,564/1,917	44	<40	<40
Phocidae	Harbor seal & northern elephant seal.	1,730	565/1,135	306/264	44	<40	<40
Otariidae	California sea lion & northern fur seal.	349	136/204	74/52	44	<40	<40

Estimated Takes of Marine Mammals

The number of marine mammals by stock that may be taken by implosion of Piers E6 through E18 were calculated based on distances to the marine mammal threshold criteria, duration of the activity, and the estimated density of each species in the ZOI (for species with insufficient data to calculate densities, estimated number of takes were based on potential for occurrence as described above). For each pier implosion scenario, the total area of the criteria zone was calculated and multiplied by the density of each species. Combining multiple piers in a single implosion event results in fewer implosion events and, therefore, fewer marine mammals that would potentially be taken. However, take estimates were calculated based on a worst-case scenario of a total of six implosion events.. Based on calculated sound pressure levels and the implementation of avoidance and minimization measures discussed below, no injury (Level A harassment) or mortality is anticipated to occur as a result of the implosion activities and NMFS is not authorizing any Level A takes for this activity. For more detailed information on the number of takes calculated for each implosion scenario, see Table 19 of the CALTRANS IHA application. For spreadsheets showing the calculations that were performed to estimate marine mammal exposures for each pier implosion scenario, see Appendix D of the IHA application. Table 7 provides a summary of the estimated exposure of marine mammals based on calculations using density estimates or past monitoring efforts in cases where density estimates were not able to be calculated (northern fur seal and bottlenose dolphin).

TABLE 7—ESTIMATED COMBINED EXPOSURES OF MARINE MAMMALS TO THE IMPLOSIONS OF PIERS E6 THROUGH E18 FOR LEVELS A AND B AND MORTALITY THRESHOLD CRITERIA

Species	Level B exposures for all implosions		Level A exposures [1]			Mortality [1]
	Behavior	TTS	PTS	GI injury	Slight lung injury	
Harbor seal	22	16	0	0	0	0
California sea lion	0	0	0	0	0	0
Northern elephant seal	0	0	0	0	0	0
Northern fur seal	[2] NA (0)	[2] NA (0)	[2] NA (0)	[2] NA (0)	[2] NA (0)	[2] NA (0)
Bottlenose dolphin	[2] NA (0)	[2] NA (0)	[2] NA (0)	[2] NA (0)	[2] NA (0)	[2] NA (0)
Harbor porpoise	0	0	0	0	0	0
TOTAL	22	16	0	0	0	0

[1] No implosions would occur if any marine mammal is within the Level A or mortality threshold criteria zones.

[2] No density estimates were calculated, so calculations of take were not completed; However, no takes are estimated in this table based on the fact that none of these species have been observed since monitoring efforts for the SFOBB project began in 2000.

However, the number of marine mammals in the area at any given time is highly variable. Animal movement depends on time of day, tide levels, weather, and availability and distribution of prey species. Therefore, to account for potential high animal density that could occur during the short window of controlled implosion, NMFS worked with CALTRANS and adjusted the estimated number upwards based on past monitoring data and/or other sightings data in the San Francisco Bay area to come up with a maximum number of potential occurrences for the requested takes. These adjustments were based on likely group sizes of these animals and were developed quantitatively to account for variability in animal occurrence and activity.

A summary of the requested number of takes by implosion of Piers E6 through E18 is provided in Table 8.

TABLE 8—SUMMARY OF REQUESTED TAKES OF MARINE MAMMALS FOR THE PIER E4 AND E5 IMPLOSIONS

Species	Level B behavioral	Level B TTS	Stock abundance	Percent take of population
Pacific harbor seal	66	48	30,968	0.37
California sea lion	18	12	296,750	0.01
Northern elephant seal	6	3	179,000	0.01
Northern fur seal	6	3	12,844	0.21
Harbor porpoise	18	9	9,886	0.09
Bottlenose dolphin	6	3	323	2.8
Total	120	78		

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (the latter is not applicable for this action). NMFS' regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully weigh 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, which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and (2) the practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Proposed Mitigation Measures for Confined Implosion

For CALTRANS's proposed controlled implosions of Piers E6 through E18, CALTRANS will utilize the mitigation measures discussed below to minimize the potential impacts to marine mammals in the project vicinity, which were developed and successfully employed for previous controlled implosions of other piers of the original East Span of the SFOBB. The primary purposes of these mitigation measures are to minimize impacts by reducing sound levels from the activities and to monitor for marine mammals within designated exclusion zones and zones of influence (ZOI). Specific proposed mitigation measures are:

Time Restriction

Implosion of Piers E6 through E18 would only be conducted during daylight hours, with enough time for pre and post implosion monitoring during daylight hours. Implosion events would also only be conducted during periods with good visibility when the largest exclusion zone can be visually monitored. In addition, to minimize impacts on biological resources, implosion events would be conducted at slack tides between September and November.

Installation of Blast Attenuation System (BAS)

Prior to the demolition of Piers E6 through E18, CALTRANS would install a Blast Attenuation System (BAS) as described above to reduce the noise and shockwave from the implosion.

Establishment of Level A Exclusion Zone

CALTRANS will establish marine mammal exclusion zones (MMEZ) for both the mortality and Level A harassment zone (including PTS, GI track injury, and slight lung injury) using the criteria threshold that extends out the furthest distance (refer to Table 6). As an additional conservative measure to ensure that no marine mammals are taken by Level A harassment, the field-implemented MMEZ will be 20 percent larger than the calculated distances to threshold criteria in Table 6.

The isopleths for PTS for phocids (harbor seal and elephant seal) cover the entire area for both Level A harassment and mortality for all pinnipeds (including California sea lions and northern fur seals), as well as bottlenose dolphins. Therefore, the pinniped and dolphin exclusion zone will be established at the radial distance to the phocid PTS Level A harassment threshold plus an additional 20 percent conservative factor. The harbor porpoise exclusion zone will be established at the radial distance to the high-frequency cetacean PTS Level A harassment threshold plus an additional 20 percent conservative factor (see Table 23 and Figures 12–14 and 17–21 of the IHA application). These MMEZs will be monitored by marine mammal observers (MMOs), and if any marine mammals are observed within the MMEZs, the implosion will be delayed until the animal leaves the area or at least 15 minutes have passed since the last observation of pinnipeds and small cetaceans and at least 30 minutes have passed since the last observation of bottlenose dolphins.

Establishment of Level B Behavioral Harassment and Temporary Hearing Threshold Shift (TTS) Monitoring Zones

Marine mammal monitoring zones will be established for both behavioral response and TTS (Level B harassment). Hydroacoustic monitoring results from the implosions of Piers E3, E4, and E5 were used to calculate distances to these thresholds for the implosions of Piers E6 through E18 (see Chapter 6 and Tables 9 to 18 of the IHA application). As a conservative measure, the field-implemented behavioral response and TTS monitoring zones will be 20 percent larger than the calculated distances to threshold criteria shown in Tables 9 to 18 of the IHA application.

The isopleths for Level B harassment to phocids (harbor seals and elephant seals) for all pier implosion scenarios cover the entire area for Level B harassment to all pinnipeds including otariids (California sea lions and fur seals) as well as bottlenose dolphins. Therefore, the pinniped and dolphin Level B harassment monitoring zones for each pier implosion scenario will be established at the radial distance to the phocid Level B harassment threshold plus an additional 20 percent conservative factor (see Tables 24 and 25 and Figures 12–16 of the IHA application).

Communication

All Marine Mammal Observers (MMOs) will be equipped with mobile phones and a VHF radio as a backup. One person will be designated as the Lead MMO and will be in constant contact with the Resident Engineer on site and the blasting crew. The Lead MMO will coordinate marine mammal sightings with the other MMOs. MMOs will contact the other MMOs when a sighting is made within the exclusion zone or near the exclusion zone so that the MMOOs within overlapping areas of responsibility can continue to track the animal and the Lead MMO is aware of the animal. If an animal has entered the exclusion zone or is near it within 30 minutes of blasting, the Lead MMO will notify the Resident Engineer and blasting crew. The Lead MMO will keep them informed of the disposition of the animal.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Incidental Take Authorizations (ITA) must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical to both compliance as well as ensuring that the most value is obtained from the required monitoring. CALTRANS has proposed marine mammal monitoring measures as part of the IHA application found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

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

physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

As most elements of marine mammal monitoring plans for pile driving activities are similar to what would be required for underwater implosions, monitoring for impacts to marine mammals from the implosion activities for Piers E3, E4, and E5 were based on the SFOBB pile driving monitoring protocol. Monitoring for the implosion events for Piers E6 through E18 will also be based on the SFOBB pile driving monitoring protocol and past implosion activities for Piers E3, E4, and E5. These monitoring plans would include monitoring an exclusion zone and ZOIs for TTS and behavioral harassment described above as well as the following:

(1) Marine Mammal Observers (MMOs)

A minimum of 10 MMOs would be required during the controlled implosions of Piers E6 through E18 so that the MMEZ, Level B Harassment TTS and Behavioral ZOIs, and surrounding area can be monitored. Up to 15 MMOs will be required for implosion events involving multiple piers in order to monitor the full extent of these areas. One MMO would be designated as the Lead MMO and would receive updates from other MMOs on the presence or absence of marine mammals within the MMEZ and would notify the Environmental Compliance Manager of a cleared exclusion zone to the implosion(s).

(2) Monitoring Protocol

Implosions of Piers E6 through E18 will be conducted only during daylight hours and with enough time for pre and post-implosion monitoring during daylight hours, and with good visibility (*i.e.,* clear skies and no high winds). This work will be completed so that MMOs will be able to detect marine mammals within the exclusion zones and beyond. The Lead MMO will be in contact with other MMOs and if any marine mammals enter an exclusion zone within 30 minutes of blasting, the Lead MMO will notify the Environmental Compliance Manager that the implosion may need to be delayed. The Lead MMO will keep the Environmental Compliance Manager informed about the disposition of the animal. If the animal remains in the MMEZ, blasting will be delayed until it has left the exclusion zone. If the animal dives and is not seen again, blasting will be delayed at least 15 minutes for pinnipeds and small cetacean (harbor porpoise), and 30 minutes for bottlenose dolphin. After the implosion has occurred, the MMOs will continue to monitor the area for at least 60 minutes.

(3) Data Collection

Each MMO will record the observation position, start and end times of observations, and weather conditions (*i.e.,* sunny/cloudy, wind speed, fog, visibility). For each marine mammal sighting, the following will be recorded, if possible:

• Species.

• Number of animals (with or without pup/calf).

• Age class (pup/calf, juvenile, adult).

• Identifying marks or color (*e.g.,* scars, red pelage, damaged dorsal fin).

• Position relative to piers being imploded (distance and direction).

• Movement (direction and relative speed).

• Behavior (*e.g.,* logging (resting at the surface), swimming, spy-hopping (raising above the water surface to view the area), foraging).

(4) Post-Implosion Survey

Although any injury or mortality from the implosions of Piers E6 through E18 is very unlikely, boat or shore surveys will be conducted daily for 3 days following the event, to determine whether any injured or stranded marine mammals are in the area. If an injured or dead animal is discovered during these surveys or by other means, the NMFS-designated stranding team will be contacted to pick up the animal. Veterinarians will treat the animal or will conduct a necropsy to attempt to determine whether it stranded because of the pier implosions.

Proposed Reporting Measures

CALTRANS would be required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This draft report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the draft report within 30 days, and if NMFS has comments, CALTRANS would address the comments and submit a final report to NMFS within 30 days. If no comments are provided by NMFS after 30 days receiving the report, the draft report is considered to be final.

Marine Mammal Stranding Plan

Stranding plans for the pier implosions of Piers E3, E4, and E5 were prepared in cooperation with the local NMFS-designated marine mammal stranding, rescue, and rehabilitation center. An updated version of this plan will be implemented during implosions of Piers E6 through E18. Although avoidance and minimization measures likely will prevent any injuries, preparations will be made in the unlikely event that marine mammals are injured. Elements of the plan will include the following:

1. The stranding crew will prepare treatment areas at an NMFS-designated facility for cetaceans or pinnipeds that may be injured from the implosions. Preparation will include equipment to treat lung injuries, auditory testing equipment, dry and wet caged areas to hold animals, and operating rooms if surgical procedures are necessary.

2. A stranding crew and a veterinarian will be on call near the piers at the time of the implosions to quickly recover any injured marine mammals, provide emergency veterinary care, stabilize the animal's condition, and transport individuals to an NMFS-designated facility. If an injured or dead animal is found, NMFS (both the regional office and headquarters) will be notified immediately, even if the animal appears to be sick or injured from causes other than the implosions.

3. Post-implosion surveys will be conducted immediately after the event and over the following 3 days to determine whether any injured or dead marine mammals are in the area.

4. Any veterinarian procedures, euthanasia, rehabilitation decisions, and time of release or disposition of the animal will be at the discretion of the NMFS-designated facility staff and the veterinarians treating the animals. Any necropsies to determine whether the injuries or death of an animal was the result of an implosion or other anthropogenic or natural causes will be conducted at an NMFS-designated facility by the stranding crew and veterinarians. The results will be communicated to both the CALTRANS and to NMFS as soon as possible, followed by a written report within a month.

Negligible Impact Analysis and Determinations

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (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 Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (*e.g.,* critical reproductive time or location, migration, *etc.*), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September, 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species and stocks listed in Table 8, given that the anticipated effects of CALTRANS' SFOBB construction activities involving controlled implosions for Piers E6 through E18 on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis for this activity, or else species-specific factors would be identified and analyzed.

No injuries or mortalities are anticipated to occur as a result of CALTRANS' SFOBB activity associated with the controlled implosions to demolish Piers E6 through E18, and none are proposed to be authorized. The relatively low marine mammal density and small Level A exclusion zones make injury takes of marine mammals unlikely, based on take calculation described above. In addition, the Level A exclusion zones would be thoroughly monitored before the proposed implosion, and detonation activity would be postponed if an marine mammal is sighted within the exclusion zone.

The takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral responses and TTS). Due to implementation of mitigation measures and proven success in implementation of these measures as evidenced during previous SFOBB activities, more significant acute stress responses, serious injury or mortality, and more significant behavioral responses are not anticipated as a result of the proposed activities. Marine mammals (Pacific harbor seal, northern elephant seal, California sea lion, northern fur seal, harbor porpoise, and bottlenose dolphin) present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise level during the implosion noise. A few marine mammals could experience TTS if they occur within the Level B TTS ZOI. However, as discussed early in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Therefore, it is not considered an injury. In addition, even if an animal receives a TTS, the TTS would be a one-time event from a brief impulse noise (about 5 seconds), making it unlikely that the TTS would lead to PTS. Finally, there is no critical habitat or other biologically important areas in the vicinity of CALTRANS' proposed controlled implosion areas (Calambokidis *et al.,* 2015).

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Potential Effects of the Specified Activity on Marine Mammals and their Habitat'' section. There is no biologically important area in the vicinity of the SFOBB project area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

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 CALTRANS's SFOBB demolition via controlled implosions of Piers E6 through E18 will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

Table 8 presents the numbers of marine mammals that could be taken by Level B harassment incidental to CALTRAN's activities. Our analysis shows that less than 2.8 percent of the affected stocks could be taken by behavioral harassment and TTS (see Table 8 in this document). Therefore, the numbers of marine mammals estimated to be taken are small relative to total populations of the affected species or stocks. In addition, the mitigation and monitoring measures (described previously in this document) prescribed in the proposed IHA are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

NMFS has determined that issuance of the IHA will have no effect on listed marine mammals, as none are known to occur in the action area.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SFOBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental

Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A FONSI was signed on August 5, 2009. In addition, for CALTRANS' Piers E4 and E5 demolition using controlled implosion, NMFS prepared an SEA and analyzed the potential impacts to marine mammals that would result from the modification. A FONSI was signed on September 3, 2015. The proposed activity and expected impacts remain within what was previously analyzed in the EA and SEAs. Therefore, no additional NEPA analysis is warranted. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CALTRANS for conducting SFOBB activities involving demolition via controlled implosion of Piers E6 through E18, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

1. This Authorization is valid from September 1, 2017, through August 31, 2018.

2. This Authorization is valid only for activities associated with the SFOBB demolition activities in San Francisco Bay.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), harbor porpoise (*Phocoena phocoena*), and bottlenose dolphin (*Tursiops truncatus*).

(b) The authorization for taking by harassment is limited to the dismantling of Piers E6 through E18 via controlled implosion.

(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the West Coast Administrator of the National Marine Fisheries Service (NMFS) at 206–526–6150, and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or her designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 8 of this notice. The taking by Level A harassment, injury, or death of these species or the taking by harassment, injury, or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

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

6. Mitigation

(a) Time Restriction

Controlled implosion of Piers E6 through E18 shall only be conducted during daylight hours on slack tides between September and November and with enough time for pre- and post-activity monitoring during daylight hours. Further, controlled implosion shall only be conducted during periods of good visibility when the largest exclusion zone can be visually monitored.

(b) For controlled implosion of Piers E6 through E18, CALTRANS will install a Blast Attenuation System (BAS) prior to demolition to reduce the noise and shockwave from the implosion.

(c) For controlled implosion of Piers E6 though E18 and associated test blasting, CALTRANS shall establish exclusions zones and zones of influence (ZOIs) that are appropriate to specific marine mammal functional hearing group (Tables 1–10, Attachment 1; see Tables 9–18 of the application) .

(d) Exclusion Zone Monitoring for Mitigation Measures.

(i) NMFS-approved MMOs shall survey the exclusion zone for 30 minutes prior to the start of controlled implosion activities to ensure that no marine mammals are seen within the zones

(ii) If marine mammals are found within the exclusion zones, controlled implosion of the pier(s) shall be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor shall wait 15 minutes for pinnipeds and small cetaceans (harbor porpoise) and 30 minutes for bottlenose dolphins prior to initiating implosion activities. If no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the exclusion zone.

(e) Communication

For controlled implosion, the Lead MMO shall be in constant contact with the Resident Engineer on site and the blasting crew to ensure that no marine mammal is within the exclusion zone before the controlled implosion.

7. Monitoring:

(a) Marine Mammal Observers.

(i) CALTRANS shall employ NMFS-approved MMOs to conduct marine mammal monitoring for its SFOBB controlled pier implosion.

(ii) Marine mammal monitoring shall begin at least 30 minutes prior to the start of the activities, shall occur through the entire activities, and shall continue for 60 minutes after the implosion events.

(iii) Observations shall be made using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). MMOs shall be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

(iv) For controlled implosion of Piers E6 through E18:

(A) A minimum of 10 MMOs shall be required during controlled implosion so that the exclusion zone, Level B Harassment TTS and Behavioral ZOIs, and surrounding area can be monitored. Up to 15 MMOs will be required for implosion events involving multiple piers.

(B) MMOs shall be positioned near the edge of each of the threshold criteria zones and shall utilize boats, barges, and bridge piers and roadway.

(C) Boat or shore surveys shall be conducted immediately after the event and daily for the three days following the event to determine if there are any injured or stranded marine mammals in the area.

(D) Monitoring Data Collection:

For each marine mammal sighting, the following shall be recorded, if possible:

- Species.
- Number of animals (with or without pup/calf).
- Age class (pup/calf, juvenile, adult).
- Identifying marks or color (scars, red pelage, damaged dorsal fin, etc.).
- Position relative to pier implosion (distance and direction).
- Movement (direction and relative speed).
- Behavior (logging [resting at the surface], swimming, spyhopping [raising above the water surface to view the area], foraging, *etc.*)

• Duration of sighting or times of multiple sightings of the same individual

8. Reporting:

(a) CALTRANS shall submit a draft monitoring report within 90 days after completion of the dismantling work or the expiration of the IHA (if issued), whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) NMFS will have an opportunity to provide comments within 30 days after receiving the draft report. If NMFS has comments, CALTRANS shall address the comments and submit a final report to NMFS within 30 days.

(c) If NMFS does not provide comments within 30 days after receiving the report, the draft report is considered to be final.

(d) In the unanticipated event that the dismantling activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, CALTRANS shall immediately cease all operations and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all sound source use in the 24 hours preceding the incident;

(iv) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) Description of marine mammal observations in the 24 hours preceding the incident;

(vi) Species identification or description of the animal(s) involved;

(vii) The fate of the animal(s); and

(viii) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with CALTRANS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CALTRANS may not resume their activities until notified by NMFS via letter, email, or telephone.

(e) In the event that CALTRANS discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), CALTRANS will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CALTRANS to determine whether modifications in the activities are appropriate.

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

9. Marine Mammal Stranding Plan:

A marine mammal stranding plan shall be prepared in cooperation with the local NMFS-designated marine mammal stranding, rescue, and rehabilitation center. Elements of that plan would include the following:

(a) The stranding crew shall prepare treatment areas at the NMFS-designated facility for cetaceans or pinnipeds that may be injured from the implosion. Preparation shall include equipment to treat lung injuries, auditory testing equipment, dry and wet caged areas to hold animals, and operating rooms if surgical procedures are necessary. Equipment to conduct auditory brainstem response hearing testing would be available to determine if any inner ear threshold shifts (TTS or PTS) have occurred.

(b) A stranding crew and a veterinarian shall be on call near the implosion event sites at the time of the implosion to quickly recover any injured marine mammals, provide emergency veterinary care, stabilize the animal's condition, and transport individuals to the NMFS-designated facility. If an injured or dead animal is found, NMFS (both the regional office and headquarters) shall be notified immediately even if the animal appears to be sick or injured from other than blasting.

(c) Post-implosion surveys shall be conducted immediately after the event and over the following three days to determine if there are any injured or dead marine mammals in the area.

(d) Any veterinarian procedures, euthanasia, rehabilitation decisions and time of release or disposition of the animal shall be at the discretion of the NMFS-designated facility staff and the veterinarians treating the animals. Any necropsies to determine if the injuries or death of an animal was the result of the blast or other anthropogenic or natural causes will be conducted at the NMFS-designated facility by the stranding crew and veterinarians. The results shall be communicated to both CALTRANS and to NMFS as soon as possible with a written report within a month.

10. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

11. A copy of this Authorization must be in the possession of each contractor who performs the controlled implosion work for Piers E6 through E18 and associated Test Blasts.

Dated: June 1, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–11646 Filed 6–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License: Evolva, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy herby gives notice of its intent to grant to Evolva, Inc., a revocable, nonassignable, exclusive license to practice in the field of use of thermoset compositions for composites manufacturing in the United States and its territories, the Government-owned inventions described in U.S. Patent No. 8,853,343 entitled: Thermoset compositions from plant polyphenols; U.S. Patent No. 8,921,614 entitled: Selective deoxygenation of hydroxybenzaldehydes; U.S. Patent No.

8,993,688 entitled: Polyphenols and high-performance resins from syringaldehyde; U.S. Patent No. 8,993,689 entitled: Polyphenols and high-performance resins from syringaldehyde; U.S. Patent No. 9,018,314 entitled: Polyphenols and high-performance resins from syringaldehyde; U.S. Patent No. 9,051,414 entitled: Polyphenols and high-performance resins from syringaldehyde; U.S. Patent No. 9,127,115 entitled: Polyphenols and high-performance resins from syringaldehyde; and, U.S. Patent No. 9,187,591 entitled: Polyphenols and high-performance resins from syringaldehyde.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than June 21, 2017.

ADDRESSES: Written objections should be directed to Naval Air Warfare Center Weapons Division, Code 400000D, 1900 N. Knox Road Stop 6306, China Lake, CA 93555–6106.

FOR FURTHER INFORMATION CONTACT: Dylan Riley, Director of Technology Transfer, Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, telephone 760–939–2105, FAX 760–939–1210, Email: *Dylan.riley@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 17, 2017.

A. M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–11633 Filed 6–5–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

List of Correspondence From January 1, 2016, Through March 31, 2016, and April 1, 2016, Through June 30, 2016

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) received by individuals during the first and second quarters of 2016. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement the IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *www2.ed.gov/policy/speced/guid/idea/index.html.*

FOR FURTHER INFORMATION CONTACT: Jessica Spataro or Mary Louise Dirrigl. Telephone: (202) 245–7605.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other documents described in this list in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7605.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from January 1, 2016, through March 31, 2016, and April 1, 2016, through June 30, 2016. Under section 607(f) of the IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter and provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part A—General Provisions

Section 608—State Administration

Topic Addressed: Rulemaking

○ Letter dated March 3, 2016, to individual (personally identifiable information redacted), regarding whether certain New York State regulations are consistent with the requirements of Part B of the IDEA.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

○ Dear Colleague Letter dated April 26, 2016, regarding the obligations of public agencies in meeting the special education and related services needs of children with disabilities who reside in nursing homes.

Topic Addressed: State Advisory Panel

○ Letter dated February 9, 2016, to Technical Assistance for Excellence in Special Education, Executive Director John D. Copenhaver, clarifying whether an individual who is not the parent of a child with a disability under Part B of the IDEA can serve as a member of the State advisory panel.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Program (IEP) Team

○ Letter dated February 17, 2016, to Illinois State Board of Education official, David Andel, reiterating the policy of the Office of Special Education Programs (OSEP) regarding attendance of attorneys at IEP Team meetings, and clarifying that the parent is not required to notify the public agency prior to an IEP Team meeting that the parent will be bringing an attorney to an IEP Team meeting.

Topic Addressed: Eligibility Determinations

○ Letter dated April 25, 2016, to Decoding Dyslexia Missouri representative, Kelli Unnerstall, regarding a public agency's responsibility to conduct evaluations of children whose reading difficulties result from dyslexia, and a parent's right to challenge the public agency's evaluation.

Section 615—Procedural Safeguards

Topic Addressed: Independent Educational Evaluation

○ Letter dated January 19, 2016, to Maryland attorney Diana M. Savit, regarding whether professionals conducting independent educational evaluations initiated by parents and school personnel conducting evaluations for the public agency must have the same qualifications and reiterating OSEP's policy regarding the use of audio or video recording devices at IEP Team meetings.

Part C—Infants and Toddlers With Disabilities

Section 635—Requirements for Statewide System

Topic Addressed: Flexibility To Serve Children 3 Years of Age Until Entrance to Elementary School

○ Letter dated May 9, 2016, to Maryland Special Needs Advocacy Project Coordinator Martha Goodman, regarding whether a State that chooses to develop a State policy to make Part

C services available to children three years of age and older may develop an IEP, to be implemented after the child turns three, before a parent chooses Part C or Part B services for their child.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 1, 2017.

Ruth E. Ryder,

Deputy Director, Office of Special Education Programs, delegated the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2017–11713 Filed 6–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0063]

Agency Information Collection Activities; Comment Request; Study of Weighted Student Funding and School-Based Systems (Study Instruments)

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 7, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0063. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–34, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Oliver Schak, 202–453–5643.

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: Study of Weighted Student Funding and School-Based Systems (Study Instruments).

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 738.

Total Estimated Number of Annual Burden Hours: 212.

Abstract: The purpose of this study is to examine districts that have implemented weighted student funding (WSF) systems. In doing so, the study team will investigate how these systems for funding schools have been implemented, the benefits in terms of enhanced school funding equity and improved resource allocation practices through more equitable distributions of funding to schools and increased principal autonomy, and the challenges each district may have faced in undertaking such a reform. To this end, the study team will conduct site visits to a set of nine case study districts that will involve in-person interviews with district officials and school staff involved in WSF system administration. In addition, the study team will collect and review relevant extant data (budget and audited expenditure files) and administer surveys to a nationally representative sample of principals and school district administrators.

Dated: June 1, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–11653 Filed 6–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–4–000]

Commission Information Collection Activities (FERC–521); Comment Request

June 1, 2017.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: The Federal Energy Regulatory Commission (Commission or FERC) previously issued a 60-day Notice in the **Federal Register** (82 FR 14710, 3/22/2017) requesting public comments on FERC–521 (Payments for Benefits from Headwater Improvements). The Commission received no comments.

In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Commission is submitting the FERC–521 to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on FERC–521 are due by July 6, 2017.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0087, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC17–4–000, by either of the following methods:

- *eFiling at Commission's Web site: 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,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–521, Payments for Benefits from Headwater Improvements.

OMB Control No.: 1902–0087.

Type of Request: Three-year extension of the FERC–521 information collection requirements with no changes to the current reporting requirements.

Abstract: The information collected under the requirements of FERC–521 is used by the Commission to implement the statutory provisions of Section 10(f) of the Federal Power Act (FPA).[1] The FPA authorizes the Commission to determine headwater benefits received by downstream hydropower project owners. Headwater benefits are the additional energy production possible at a downstream hydropower project resulting from the regulation of river flows by an upstream storage reservoir.

When the Commission completes a study of a river basin, it determines headwater benefits charges that will be apportioned among the various downstream beneficiaries. A headwater benefits charge and the cost incurred by the Commission to complete an evaluation are paid by downstream hydropower project owners. In essence, the owners of non-federal hydropower projects that directly benefit from a headwater improvement must pay an equitable portion of the annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury. The regulations provide for apportionment of these costs between the headwater project and downstream projects based on downstream energy gains and propose equitable apportionment methodology that can be applied to all river basins in which headwater improvements are built. The Commission requires owners of non-federal hydropower projects to file data for determining annual charges as outlined in 18 Code of Federal Regulations (CFR) part 11.

Type of Respondents: There are two types of entities that respond, Federal and Non-Federal hydropower project owners. The Federal entities that typically respond are the U.S. Army Corps of Engineers and the U.S. Department of Interior Bureau of Reclamation. The Non-Federal entities may consist of any Municipal or Non-Municipal hydropower project owner.

Estimate of Annual Burden:[2] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–521—PAYMENTS FOR BENEFITS FROM HEADWATER IMPROVEMENTS

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Federal and Non-Federal hydropower project owners ..	3	1	3	40 hrs.; $3,060	120 hrs.; $9,180	$3,060
Total cost	.....	.....	.....	.....	120 hrs.; $9,180	3,060

The total estimated annual cost burden to respondents is $9,180 [120 hrs. * $76.50/hour[3] = $9,180].

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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–11663 Filed 6–5–17; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 803.

[2] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[3] Commission staff thinks that respondents to this collection are similarly compensated in terms of salary and benefits. $76.50/hour is the average FERC employee hourly salary plus benefits for 2017.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR17–44–000.

Applicants: Hope Gas, Inc.

Description: Tariff filing per 284.123(b),(e)+(g): HGI—Trade Name

Amendment to be effective 5/16/2017; Filing Type: 1300.
Filed Date: 5/23/17.
Accession Number: 201705235073.
Comments Due: 5 p.m. ET 6/13/17.
284.123(g) Protests Due: 5 p.m. ET 7/24/17.

Docket Numbers: RP17–754–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.204: Tariff Update Filing May 2017 to be effective 7/1/2017.
Filed Date: 05/23/2017.
Accession Number: 20170523–5038.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–755–000.
Applicants: White River Hub, LLC.
Description: Annual Report of Fuel Gas Reimbursement Percentage for 2017 of White River Hub, LLC.
Filed Date: 05/23/2017.
Accession Number: 20170523–5125.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–756–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Annual Report of Fuel Gas Reimbursement Percentage for 2017 of Questar Southern Trails Pipeline Company.
Filed Date: 05/23/2017.
Accession Number: 20170523–5126.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–757–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 05/23/17 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 5/23/2017.
Filed Date: 05/23/2017.
Accession Number: 20170523–5143.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–758–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 05/23/17 Negotiated Rates—Mercuria Energy America, Inc. (HUB) 7540–89 to be effective 5/23/2017.
Filed Date: 05/23/2017.
Accession Number: 20170523–5144.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–759–000.
Applicants: Elba Express Company, L.L.C.
Description: Elba Express Company, L.L.C. submits tariff filing per 154.203: Annual Cashout True-up 2017.
Filed Date: 05/24/2017.
Accession Number: 20170524–5049.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–760–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: El Paso Natural Gas Company, L.L.C. submits tariff filing per 154.601: Negotiated Rate Agreement Update (APS June 2017) to be effective 6/1/2017 under.
Filed Date: 05/24/2017.
Accession Number: 20170524–5088.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–761–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.403: Rate Schedules LSS and SS–2 Tracker—Eff. 06/01/2017 to be effective 6/1/2017.
Filed Date: 05/24/2017.
Accession Number: 20170524–5151.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–762–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Tallgrass Interstate Gas Transmission, LLC submits tariff filing per 154.204: TIGT PAWS FILING to be effective 7/1/2017.
Filed Date: 05/24/2017.
Accession Number: 20170524–5175.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

Docket Numbers: RP17–763–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Penalty Charge Reconciliation Filing of Tallgrass Interstate Gas Transmission, LLC.
Filed Date: 05/24/2017.
Accession Number: 20170524–5204.
Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). 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 30, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–11662 Filed 6–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2124–016.
Applicants: Spring Canyon Energy LLC.
Description: Supplement to December 23, 2016 Triennial Report of Spring Canyon Energy LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5318.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER10–2125–017.
Applicants: Judith Gap Energy LLC.
Description: Supplement to December 23, 2016 Triennial Report of Judith Gap Energy LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5319.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER10–2128–016.
Applicants: Wolverine Creek Energy LLC.
Description: Supplement to December 23, 2016 Triennial Report for Wolverine Creek Energy LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5317.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER10–2129–012.
Applicants: Grays Harbor Energy LLC.
Description: Supplement to December 23, 2016 Triennial Report of Grays Harbor Energy LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5320.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER10–2132–016.
Applicants: Willow Creek Energy LLC.
Description: Supplement to December 23, 2016 Triennial Report of Willow Creek Energy LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5321.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER10–2135–012.
Applicants: Spindle Hill Energy LLC.

Description: Supplement to December 23, 2016 Triennial Report of Spindle Hill Energy LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5322.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER16–1720–002.
Applicants: Invenergy Energy Management LLC.
Description: Supplement to December 23, 2016 Triennial Report for the Northwest Region of Invenergy Energy Management LLC.
Filed Date: 5/30/17.
Accession Number: 20170530–5141.
Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER17–1713–000.
Applicants: ISO New England Inc., NSTAR Electric Company.
Description: § 205(d) Rate Filing: ISO–NE and NSTAR Original Service Agreement under Schedule 21–NSTAR of ISO OATT to be effective 7/31/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5098.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1714–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Puente Power Project to be effective 6/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5167.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1715–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: May 2017 Western WDT Service Agreement Biannual Filing to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5168.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1716–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: May 2017 Western Interconnection Agreement Biannual Filing to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5174.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1717–000.
Applicants: Dynegy Conesville, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings and Request for Waiver to be effective 5/9/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5190.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1718–000.
Applicants: Dynegy Dicks Creek, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings and Request for Waiver to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5194.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1719–000.
Applicants: Dynegy Killen, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings and Request for Waiver to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5196.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1720–000.
Applicants: Dynegy Miami Fort, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings and Request for Waiver to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5197.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1721–000.
Applicants: Dynegy Stuart, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings and Request for Waiver to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5201.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1722–000.
Applicants: Dynegy Zimmer, LLC.
Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filings and Request for Waiver to be effective 8/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5203.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1723–000.
Applicants: Green Power Solutions of Georgia, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 6/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5205.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1724–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 508 to be effective 6/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5215.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1725–000.
Applicants: MATL LLP.
Description: § 205(d) Rate Filing: Creditworthiness Alignment Filing to be effective 7/31/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5231.
Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1726–000.
Applicants: Tampa Electric Company.
Description: § 205(d) Rate Filing: Emergency Interchange Service Schedule A&B–2017 (Bundled) to be effective 5/1/2017.
Filed Date: 5/31/17.
Accession Number: 20170531–5256.
Comments Due: 5 p.m. ET 6/21/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 31, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–11661 Filed 6–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–125–000.
Applicants: U.S. Gas & Electric, Inc., Energy Services Providers, Inc., Massachusetts Gas & Electric, Inc., Connecticut Gas & Electric, Inc., Verengo, Inc.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Waivers, Confidential Treatment and Expedited Action of U.S. Gas & Electric, Inc., et. al.
Filed Date: 5/30/17.
Accession Number: 20170530–5232.
Comments Due: 5 p.m. ET 6/20/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1982–014; ER10–1246–013; ER10–1252–013; ER10–1253–013.

Applicants: Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc.

Description: Amendment to December 15, 2016 Triennial Market Power Analysis for the Northeast region of the Con Edison Companies.

Filed Date: 5/30/17.

Accession Number: 20170530–5224.

Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER10–2764–016.

Applicants: Vantage Wind Energy LLC.

Description: Supplement to December 23, 2016 Triennial Report for the Northwest Region of Vantage Wind Energy.

Filed Date: 5/30/17.

Accession Number: 20170530–5310.

Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER16–2411–002.

Applicants: Luning Energy Holdings LLC.

Description: Supplement to December 16, 2016 Triennial Report for Northwest region of Luning Energy Holdings LLC.

Filed Date: 5/30/17.

Accession Number: 20170530–5229.

Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER17–1710–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Wholesale Market Participation Agreement No. 4710; Queue No. AC1–203 to be effective 5/8/2017.

Filed Date: 5/30/17.

Accession Number: 20170530–5158.

Comments Due: 5 p.m. ET 6/20/17.

Docket Numbers: ER17–1711–000.

Applicants: Upper Peninsula Power Company.

Description: § 205(d) Rate Filing: Sales of Ancillary Services and Distribution Service to be effective 7/1/2017.

Filed Date: 5/31/17.

Accession Number: 20170531–5001.

Comments Due: 5 p.m. ET 6/21/17.

Docket Numbers: ER17–1712–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–05–31_Compensation for Manual Redispatch filing to be effective 6/1/2017.

Filed Date: 5/31/17.

Accession Number: 20170531–5023.

Comments Due: 5 p.m. ET 6/21/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 31, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–11660 Filed 6–5–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR17–37–001.

Applicants: Atlanta Gas Light Company.

Description: Tariff filing per 284.123(b),(e)+(g): Statement of Rates to be effective 3/1/2017; Filing Type: 1270.

Filed Date: 5/17/17.

Accession Number: 201705175143.

Comments Due: 5 p.m. ET 6/7/17.

284.123(g) Protests Due: 5 p.m. ET 6/7/17.

Docket Numbers: RP17–753–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: PAL FOSA Cleanup to be effective 6/22/2017.

Filed Date: 05/22/2017.

Accession Number: 20170522–5038.

Comment Date: 5:00 p.m. Eastern Time on Monday, June 05, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–11664 Filed 6–5–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9962–63–OA]

Notification of a Public Teleconference of the Chartered Science Advisory Board (SAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered SAB to: Discuss information provided by the EPA on planned actions in the Fall 2016 semi-annual regulatory agenda and their supporting science; and to receive briefings on current activities from SAB members.

DATES: The teleconference will be held on Thursday, June 29, 2017, from 1:00 p.m. to 5:00 p.m. (Eastern Time).

Location: The public teleconference will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public teleconference may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4885 or at *carpenter.thomas@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the EPA Web site at *https://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on

the scientific and technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to discuss and deliberate on the topics below.

(1) As part of the EPA's effort to routinely inform the SAB about proposed and planned agency actions that have a scientific or technical basis, the agency provided notice to the SAB that the Office of Management and Budget published the ''Unified (Regulatory) Agenda'' on the Web on November 17, 2016 available at *https://www.reginfo.gov/public/do/eAgendaMain.*

(2) The SAB convened a Work Group to review information provided in the agency's Fall 2016 regulatory agenda regarding EPA planned actions and their supporting science. The SAB will discuss recommendations and information developed by the Work Group regarding the adequacy of the science supporting the planned actions. Information about this advisory activity can be found on the Web at *https://www.epa.gov/sab/* Briefings from SAB members on current activities and committee and panels developing advisory reports.

Pursuant to FACA and EPA policy, notice is hereby given that the Chartered SAB will hold a public teleconference to discuss information provided by the EPA on planned actions in the Fall 2016 semi-annual regulatory agenda and their supporting science. The Chartered SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible on the SAB Web site at *https://www.epa.gov/sab/.*

Procedures for Providing Public Input: Public comment for consideration by the EPA's federal advisory committees and panels has a different purpose from public comment provided to the EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for the EPA. Interested members of the public may submit relevant written or oral information on the topic of this advisory activity, and/or the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments. *Oral Statements:* In general, individuals or groups requesting an oral presentation on a public teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Thomas Carpenter, DFO, in writing (preferably via email) at the contact information noted above by June 22, 2017, to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by June 22, 2017, so that the information may be made available to the SAB members for their consideration. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Carpenter at the contact information provided above. To request accommodation of a disability, please contact Mr. Carpenter preferably at least ten days prior to each meeting to give the EPA as much time as possible to process your request.

Dated: May 9, 2017.

Christopher S. Zarba,

Director, EPA Science Advisory Staff Office.

[FR Doc. 2017–11688 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0180; FRL–9962–78]

FIFRA Scientific Advisory Panel; Notice of Public Meeting; Request for Ad Hoc Expert Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review physiologically based pharmacokinetic modeling to address pharmacokinetic differences between and within species.

DATES: The meeting will be held on October 24, 2017 to October 27, 2017, from approximately 9 a.m. to 5 p.m.

Comments. Written comments should be submitted on or before September 11, 2017. FIFRA SAP may not be able to fully consider written comments submitted after September 11, 2017. Requests to make oral comments should be submitted on or before September 25, 2017 by contacting the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before July 21, 2017.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP Web site at *https://www.epa.gov/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to allow EPA time to process your request.

ADDRESSES: *Meeting:* The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0180, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Marquea D. King, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3626; email address: *king.marquea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also 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 CBI information to EPA through regulations.gov or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2017–0180 in the subject line on the first page of your request.

1. *Written comments.* Written comments should be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before September 11, 2017, to provide FIFRA SAP the time necessary to consider and review the written comments. FIFRA SAP may not be able to fully consider written comments submitted after September 11, 2017.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to FIFRA SAP to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 25, 2017, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until September 25, 2017 and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. Oral comments before FIFRA SAP are limited to approximately 5 minutes unless arrangements have been made prior to September 25, 2017. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. In addition, each speaker should bring 15 copies of his or her oral remarks and presentation slides (if required) for distribution to FIFRA SAP at the meeting by the DFO.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc expert members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates, both U.S. citizens and permanent residents who can demonstrate that they are actively seeking U.S. citizenship will be considered. For each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Physiologically-based pharmacokinetic (PBPK) modeling, pharmacokinetics, pharmacodynamic (PD) modeling, *in vitro* to *in vivo* extrapolation, human health risk assessment, neurotoxicity, organophosphate pesticides, pyrethroids pesticides, *N*-methyl carbamate pesticides, fungicides, acetylcholinesterase inhibition, and exposure assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before July 21, 2017. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before that date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the potential Panel member to fully participate in the Panel's review, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each Panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. In order to have the collective breadth of experience needed to address the Agency's peer review charge for this meeting, the Agency anticipates selecting approximately 13 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634—Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes and the final meeting report. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *https://www.epa.gov/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. The FIFRA SAP is assisted in their reviews by ad hoc participation from the Science Review Board (SRB). As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists.

B. Public Meeting

The 2009 National Research Council's report ''Science and Decisions'' recommends that the EPA use the best, most current science to support or revise the default assumptions in risk assessment. In addition, the 2013 Institute of Medicine's report on ''Environmental Decisions in the Face of Uncertainty'' further recommends that replacing default uncertainty factors with data-derived extrapolation factors (DDEFs) that delineate the differences between species would reduce uncertainty in risk assessment. Such inter- and intra-species extrapolation factors can be derived using a PBPK modeling approach to organize mechanistic data on properties that determine the absorption, distribution, metabolism, and excretion (ADME) of chemicals that enter the body. In the 2006 document on ''Approaches for the Application of Physiologically Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment'', the Agency recognizes that PBPK model analysis is a scientifically sound approach that allows for estimating the internal dose of a chemical or its metabolite at a target site, and can act as a means to evaluate and describe the uncertainty in a risk assessment.

PBPK models incorporate the relevant physiology, chemistry, biochemistry that determines the ADME processes, and thus, they are useful for predicting internal dosimetry related to a certain chemical within and outside the testing conditions (*e.g.,* species, dose ranges). PBPK models have been used to assist high-to-low dose, route-to-route, aggregation of exposure from multiple routes, and inter-species extrapolations that are necessary for estimating human health risks based on the results of animal toxicity studies. The physiological structure of PBPK models also allows for examining the effects of changing physiology, such as aging, early life-stage, or pregnancy. The temporal change in the dose metric simulated by a PBPK model can also be linked to a PD model to predict quantitative changes in biological effects, such as acetylcholinesterase (AChE) inhibition.

Several registrants, including the Council for the Advancement of Pyrethroid Human Health Risk Assessment (CAPHRA), Tessenderlo Kerley Inc. (TKI), FMC/Cheminova, and Syngenta, are developing PBPK (or PBPK–PD) models for the chemicals: Acibenzolar, carbaryl, deltamethrin, dimethoate, malathion, and permethrin. All six models will include life-stage physiological changes from birth to adulthood, so that dose metrics can be predicted at any age. These life-stage models, however, will not include gestation and lactational phases, therefore; it is not expected that these models will have the capability to predict dose metrics in pregnant women or fetuses or breastfeeding exposures. These models are intended as a means to estimating inter- and intra-species data derived extrapolation factors and/or human points of departure (PoD) for various exposure scenarios (*e.g.,* routes of exposure). For dimethoate, malathion, and carbaryl, the PBPK models will be coupled with PD models to predict AChE inhibition in red blood cells (RBCs) and other tissues (*e.g.,* brain).

The purpose of the October 2017 SAP will be to review five PBPK or PBPK–PD models (carbaryl, deltamethrin, dimethoate, malathion, and permethrin) for the purposes of model structures, mathematical representations, parameter estimations, computer implementations, variability and uncertainty analysis, and model predictive capabilities, as well as the appropriateness of their applications in human health risk assessments. The details for each model, including their inputs, parameters and associated distributions, and the model code, written in software program acslX or R, will be provided for five (not including acibenzolar) chemicals as part of the background materials for the meeting. The agency will solicit comments from the SAP members on the evaluation of these PBPK (or PBPK–PD) models regarding their capability to predict appropriate internal dose metrics in humans. In addition, the SAP members will be asked to evaluate the appropriateness of using these models for intended risk assessment purposes, such as deriving chemical-specific DDEFs to replace default uncertainty factors, or estimating human PoDs for various exposure scenarios (*e.g.,* dietary, drinking water, and worker exposures). Finally, the SAP members will be asked to comment on the potential for using these models as a basis for extrapolation to other chemicals within the same chemical class.

For the sixth PBPK model (acibenzolar), developed in Simcyp, details including inputs, parameters and associated distributions, will be provided as background materials. The SAP members, however, will not be asked to review the Simcyp model code. Instead, the agency will solicit comments from the SAP members as a consultation on this model as primarily

a proof-of-concept study, highlighting newer *in vitro* and *in silico* based approaches. This model is not anticipated to be used in a risk assessment by the Agency.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, charge/questions to FIFRA SAP, and related supporting materials will be available on or before August 11, 2017. In addition, a list of candidates under consideration as prospective ad hoc panelists for this meeting will be available for public comment by mid to late August (see link for listing of nominees to appear in mid to late August at *https://www.epa.gov/sap*). Comments should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the deadline listed on the Web site given above. Your comments will be placed in the public docket by the DFO. You may obtain electronic copies of most meeting documents, including FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting) and the meeting agenda, at *http://www.regulations.gov* and the FIFRA SAP Web site at *https://www.epa.gov/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes and final report will be posted on the FIFRA SAP Web site or may be obtained from the OPP Docket at *http://www.regulations.gov*.

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.*

Dated: May 25, 2017.

Stanley Barone Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 2017–11697 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9963–09–Region 10]

Public Water Supply Supervision Program; Program Revision for the State of Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Washington has revised its approved State Public Water Supply Supervision Primacy Program. Washington has adopted regulations analogous to the Environmental Protection Agency's Revised Total Coliform Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these State program revisions. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian tribes within ''Indian country'' as defined by 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Washington.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by July 6, 2017 to the Acting Regional Administrator at the EPA address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Acting Regional Administrator. However, if a substantial request for a public hearing is made by July 6, 2017, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Acting Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 6, 2017. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Acting Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the Washington Department of Health, Drinking Water Program, P.O. Box 47820, Olympia, Washington 98504 and between the hours of 9:00 a.m.–12:00 p.m. and 1:00–4:00 p.m. at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the documents which explain the rule can also be obtained at EPA's Web site at: *https://www.federalregister.gov/articles/2013/02/13/2012-31205/national-primary-drinking-water-regulations-revisions-to-the-total-coliform-rule* and *https://www.federalregister.gov/articles/2014/02/26/2014-04173/national-primary-drinking-water-regulations-minor-corrections-to-the-revisions-to-the-total-coliform,* or by writing or calling Ricardi Duvil, Ph.D. at the address below.

FOR FURTHER INFORMATION CONTACT: Ricardi Duvil, Ph.D., EPA Region 10, Drinking Water Unit, 1200 Sixth Avenue, Suite 900, OWW–193, Seattle, Washington 98101, telephone (206) 553–2578, email at *duvil.ricardi@epa.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: May 10, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017–11705 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9962–28–Region 3]

Notice of Tentative Approval and Opportunity for Public Comment and Public Hearing for Public Water System Supervision Program Revision for Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval and solicitation of requests for public hearing.

SUMMARY: Notice is hereby given that the Commonwealth of Virginia is revising its approved Public Water System Supervision Program. Virginia has adopted drinking water regulations for the Revised Total Coliform Rule. The U.S. Environmental Protection Agency (EPA) has determined that Virginia's Revised Total Coliform Rule meets all minimum federal requirements, and that it is no less stringent than the corresponding federal regulation. Therefore, EPA has tentatively decided to approve the State program revisions.

DATES: Comments or a request for a public hearing must be submitted by July 6, 2017. This determination shall become final and effective on July 6, 2017, if no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Virginia Department of Health, Office of Water, Madison Building, 109 Governor Street, Richmond, VA 23219 or telephone at 804–864–7502.

FOR ADDITIONAL INFORMATION CONTACT: Patti Kay Wisniewski, Drinking Water Branch (3WP21) at the Philadelphia address given above, via email at *wisniewski.patti-kay@epa.gov* or telephone (215) 814–5668 or fax (215) 814–2302.

SUMMARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a hearing. All comments will be considered, and if necessary EPA will issue a response. Frivolous or insubstantial requests for a hearing will be denied by the Regional Administrator. If a substantial request for a public hearing is made by July 6, 2017, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: April 14, 2017.

Cecil A. Rodrigues,

Acting Regional Administrator.

[FR Doc. 2017–11702 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2017–0051: FRL–9962–90–Region 10]

Adequacy Determination for the Oakridge-Westfir, Oregon $PM_{2.5}$ State Implementation Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public of its finding that the motor vehicle emissions budget (MVEB) for primary particulate matter with an aerodynamic diameter of a nominal 2.5 microns or less ($PM_{2.5}$) in the Oakridge-Westfir $PM_{2.5}$ state implementation plan (SIP or attainment plan) are adequate for transportation conformity purposes. The attainment plan was submitted to the EPA by the State of Oregon Department of Environmental Quality (DEQ or the State) on January 20, 2017. As a result of this adequacy finding, the Oregon DEQ, the Oregon Department of Transportation, and the U.S. Department of Transportation will be required to use these MVEBs for future transportation conformity determinations.

DATES: This finding is effective June 21, 2017.

FOR FURTHER INFORMATION CONTACT: The finding will be available at the EPA's conformity Web site: *https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-epa-has-found-adequate-or.* You may also contact Dr. Karl Pepple, U.S. EPA, Region 10 (OAWT–107), 1200 Sixth Ave., Suite 900, Seattle, WA 98101; (206) 553–1778; or by email at *pepple.karl@epa.gov.*

SUPPLEMENTARY INFORMATION: This action provides notice of the EPA's adequacy finding regarding the MVEBs located in the attainment plan for the 2006 $PM_{2.5}$ national ambient air quality standards for purposes of transportation conformity. The EPA's finding was made pursuant to the adequacy review process for state attainment plan submissions delineated at 40 CFR 93.118(f)(1) under which the EPA reviews the adequacy of an attainment plan submission prior to the EPA's final action on the attainment plan.

Before the attainment plan was submitted to the EPA, consultation among federal, State, and local agencies occurred. The State submitted the attainment plan to the EPA on January 20, 2017. Pursuant to 40 CFR 93.118(f)(1), the EPA notified the public of its receipt of this plan and its review for an adequacy determination on the EPA's Web site and requested public comment by no later than March 9, 2017. The EPA received no comments on the plan during the comment period. As part of our analysis, we also reviewed the State's compilation of public comments and response to comments that were submitted during the State's public process for the attainment plan. The EPA finds that the MVEBs in the attainment plan are adequate for purposes of transportation conformity. There were no comments submitted on the attainment plan during the State public process.

The EPA notified Oregon DEQ in a letter dated April 24, 2017 (adequacy letter), subsequent to the close of the EPA comment period, that the EPA had found the MVEBs located in the attainment plan to be adequate for use in transportation conformity. A copy of the adequacy letter and its enclosure are available in the docket for this action and at the EPA's conformity Web site.[1] The MVEB that the EPA determined to be adequate for purposes of transportation conformity is listed in the following table.

2015 WORST CASE DAY MOTOR VEHICLE EMISSIONS BUDGET FOR OAKRIDGE-WESTFIR

Primary $PM_{2.5}$	22.2 lbs/day.

Transportation conformity is required by section 176(c) of the Clean Air Act. Transportation conformity to an attainment plan means that on-road transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The minimum criteria by which we determine whether an attainment plan is adequate for conformity purposes are specified at 40 CFR 93.118(e)(4). The EPA's analysis of how the attainment plan satisfies these criteria is found in the adequacy letter and its enclosure. The EPA's adequacy review is separate from the EPA's attainment plan completeness review and it is not dispositive of the EPA's ultimate action on the attainment plan.

Authority: 42 U.S.C. 7401–767Iq.

Dated: May 10, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017–11690 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

[1] *https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-epa-has-found-adequate-or.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0471; FRL–9962–65–OAR]

RIN 2060–AS26

Granting Petitions To Add n-Propyl Bromide to the List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Notice, extension of comment period.

SUMMARY: On January 9, 2017, the Environmental Protection Agency (EPA) published a draft notice of the rationale for granting petitions to add n-propyl bromide (nPB), also known as 1-bromopropane (1-BP) (Chemical Abstract Service No. 106–94–5), to the list of hazardous air pollutants contained in section 112(b)(1) of the Clean Air Act. In this notice, the EPA is extending the comment period on the draft notice until October 1, 2017. The EPA received a timely request to extend the comment period from March 10, 2017, to October 1, 2017, in order to allow for the review of data and information that would otherwise become available after the close of the comment period. On March 6, 2017, as an initial response, the EPA made an interim extension of the comment period by 90 days until June 8, 2017. The EPA is now granting the request in full and extending the comment period until October 1, 2017.

DATES: The public comment period for the draft notice published in the **Federal Register** on January 9, 2017 (82 FR 2354), is being extended. Written comments must be received on or before October 1, 2017.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0471, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Elineth Torres, Sector Policies and Programs Division (D205–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4347; email address: *torres.elineth@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is granting the request for extension of time to provide the public additional opportunity to review and consider the Toxics Release Inventory (TRI) data for nPB, which becomes available in late July 2017, when preparing comments on this draft notice. The EPA has decided to extend the public comment period until October 1, 2017.

Dated: May 10, 2017.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2017–11623 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9961–75–Region 6]

Adequacy Status of the Houston-Galveston-Brazoria, Texas Reasonable Further Progress 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) in the Houston-Galveston-Brazoria, Texas (HGB) Reasonable Further Progress (RFP) State Implementation Plan (SIP) revision for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS), submitted on December 29, 2016 by the Texas Commission on Environmental Quality (TCEQ) are adequate for transportation conformity purposes. As a result of EPA's finding, the HGB area must use these budgets for future conformity determinations.

DATES: These budgets are effective June 21, 2017.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.* You may also contact Mr. Jeffrey Riley, State Implementation Section (6MM–AA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8542 or *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. The word ''budget(s)'' refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X).

On December 29, 2016, we received a SIP revision from the TCEQ. This revision consisted of an RFP SIP for the HGB 2008 8-hour ozone NAAQS nonattainment area. This submission established MVEBs for the HGB 2008 ozone nonattainment area for the year 2017. The MVEB is the amount of emissions allowed in the SIP for on-road motor vehicles; it establishes an emissions ceiling for the HGB area regional transportation network, used to develop the 2017 on-road motor vehicle emissions projections contained in the RFP SIP. The MVEBs are provided in Table 1:

TABLE 1—HOUSTON-GALVESTON-BRAZORIA REASONABLE FURTHER PROGRESS NO_X AND VOC MVEBS

[Summer ozone season tons per day]

Ozone Precursor	2017 MVEB
NO_X	121.81
VOC	68.04

On January 18, 2017, EPA posted the revised HGB area MVEBs on EPA's Web site for the purpose of soliciting public comments, as part of the adequacy process. The comment period closed on February 17, 2017, and we received no comments.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 6 sent a letter to TCEQ on April 28, 2017, finding that the MVEBs in the HGB RFP SIP, submitted on December 29, 2016 are adequate and must be used for transportation conformity determinations in the HGB area. This finding has also been announced on EPA's conformity Web site: *https://*

www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 Code of Federal Regulations (CFR) part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' See 69 FR 40004 (July 1, 2004). Please note that an adequacy review is separate from EPA's SIP completeness review, and it should not be used to prejudge EPA's ultimate action on the HGB 2008 8-hour ozone NAAQS RFP SIP revision submittal. Even if EPA finds the budgets adequate in this action, we will undertake a separate review and action on the RFP SIP revision that will determine the approvability of the SIP revision.

Within 24 months from the effective date of this notice, the HGB-area transportation partners, such as the Houston-Galveston Area Council, will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See 73 FR 4419 (January 24, 2008).

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

Dated: April 28, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017–11602 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9961–85–OLEM]

Thirty-First Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 120(c) requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. As explained further below, the Docket is used to identify Federal facilities that should be evaluated to determine if they pose a threat to public health or welfare and the environment and to provide a mechanism to make this information available to the public.

This notice identifies the Federal facilities not previously listed on the Docket and also identifies Federal facilities reported to EPA since the last update on October 24, 2016. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include 33 additions, 1 correction, and 13 deletions to the Docket since the previous update. At the time of publication of this notice, the new total number of Federal facilities listed on the Docket is 2,338.

DATES: This list is current as of March 10, 2017.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *http://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates* by clicking on the link for *Cleanups at Federal Facilities* or by contacting Benjamin Simes (*Simes.Benjamin@epa.gov*), Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office (Mail Code 5106R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Additional information on the Docket and a complete list of Docket sites can be obtained at: *https://www.epa.gov/fedfac/fedfacts.*

SUPPLEMENTARY INFORMATION:

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1.0 Introduction

Section 120(c) of CERCLA, 42 United States Code (U.S.C.) § 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under Section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA Section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA Section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA Section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA Section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA Section 101. Additionally, CERCLA Section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA Section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with

a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the Docket was published in the **Federal Register** on February 12, 1988 (53 FR 4280). Since then, updates to the Docket have been published on November 16, 1988 (53 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222); October 2, 2001 (66 FR 50185); July 1, 2002 (67 FR 44200); January 2, 2003 (68 FR 107); July 11, 2003 (68 FR 41353); December 15, 2003 (68 FR 69685); July 19, 2004 (69 FR 42989); December 20, 2004 (69 FR 75951); October 25, 2005 (70 FR 61616); August 17, 2007 (72 FR 46218); November 25, 2008 (73 FR 71644); October 13, 2010 (75 FR 62810); November 6, 2012 (77 FR 66609); March 18, 2013 (78 FR 16668); January 6, 2014 (79 FR 654), December 31, 2014 (79 FR 78850); August 17, 2015 (80 FR 49223), March 3, 2016 (81 FR 11212), and October 24, 2016 (81 FR 73096). This notice constitutes the thirty-first update of the Docket.

This notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/docket-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final* or obtained by calling the Regional Docket Coordinators listed below. This notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

Martha Bosworth (HBS), US EPA Region 1, 5 Post Office Square, Suite 100, Mail Code: OSRR07–2, Boston MA 02109–3912, (617) 918–1407.

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637– 4260.

Joseph Vitello (3HS12), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3354.

Leigh Lattimore (4SF–SRSEB), US EPA Region 4, 61 Forsyth St. SW., Atlanta, GA 30303, 404–562–8768.

David Brauner (SR–6J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–1526.

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.

Paul Roemerman (SUPRERSP), US EPA Region 7, 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7694.

Ryan Dunham (EPR–F), US EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.

Leslie Ramirez (SFD–6–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3978.

Monica Lindeman (ECL, ABU), US EPA Region 10, 1200 Sixth Avenue, Suite 900, ECL–112, Seattle, WA 98101, (206) 553–5113.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions and deletions to the list of Docket facilities since the previous Docket update.

3.1 Additions

In this notice, 33 Federal facilities are being added to the Docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103). CERCLA Section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL.

3.2 Deletions

In this notice, 13 Federal facilities are being deleted from the Docket. There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: A facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR 262.44); a facility that was not Federally-owned or operated at the time of the listing; a facility included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. (*See* Docket Codes (*Categories for Deletion of Facilities*) for a more refined list of the criteria EPA uses for deleting sites from the Docket. Facilities being deleted no longer will be subject to the requirements of CERCLA Section 120(d).

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in

[1] See Section 3.2 for the criteria for being deleted from the Docket.

previous Docket updates. The corrected update is shown directly below, for easy comparison. This notice includes 1 correction.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this notice, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA Section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the other Federal Agency (OFA) with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have never generated more than 1,000 kg of hazardous waste in any month; (3) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA Section 3010; and (4) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under Section 103(a), should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872.* The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of new Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2]

The statutory provisions under which a Federal facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each Federal facility: For example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) A report submitted in accordance with Section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR part 302; (2) a report submitted to EPA in accordance with Section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with Section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or state permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with Section 105(d) of CERCLA; (7) a report submitted in accordance with Section 311(b)(5) of the Clean Water Act; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of the date of this notice, the total number of Federal facilities that appear on the Docket is 2,318.

Dated: March 30, 2017.

Charlotte Bertrand,

Director, Federal Facilities Restoration and Reuse Office, Office of Land and Emergency Management.

Categories for Deletion of Facilities

(1) Small-Quantity Generator.Show citation box.

(2) Never Federally Owned and/or Operated.

(3) Formerly Federally Owned and/or Operated but not at time of listing.

(4) No Hazardous Waste Generated.

(5) (This code is no longer used.)

(6) Redundant Listing/Site on Facility.

(7) Combining Sites Into One Facility/Entries Combined.

(8) Does Not Fit Facility Definition.

Categories for Addition of Facilities

(15) Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.

(16) One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.

(17) New Information Obtained Showing That Facility Should Be Included.

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.

(19) Sites Were Combined Into One Facility.

(19A) New Currently Federally Owned and/or Operated Facility Site.

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change.

(20A) Typo Correction/Name Change/Address Change.

(21) Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)

(22) Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously performed PA, which is subject to approval by EPA.)

(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #31—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
AGRICULTURE RESEARCH SERVICE—KELSO.	2835 HWY 138 EAST	KELSO	AR	71670	AGRICULTURE	CERCLA 103	17	UPDATE #31.
US FS -WHITMAN RANGER DISTRICT STORAGE YARD.	3100 13TH ST	BAKER CITY	OR	97814	AGRICULTURE	RCRA 3010	17	UPDATE #31.
ANG—BLUE MOUNTAIN TRAINING AREA.	NATIONAL FOREST ROAD 365.	MISSOULA	MT	59847	ARMY	RCRA 3010	17	UPDATE #31.
USADACENFB	HAWK ROAD, MCGREGOR RANG CAMP, NM, 88342.	FORT BLISS	TX	79916	ARMY	RCRA 3010	17	UPDATE #31.
US ACE CIVIL—PARCEL F AT KAUKAUNA LOCK 3.	1008 AUGUSTINE ST	KAUKAUNA	WI	54130	CORPS OF ENGINEERS, CIVIL.	RCRA 3010	17	UPDATE #31.
US ARMY CORP OF ENGINEERS—17th ST. Canal.	105 HAMMOND HWY LAT: 30N .022891'.	METAIRIE	LA	7005	CORPS OF ENGINEERS, CIVIL.	CERCLA 103	17	UPDATE #31.
US ACE–CIVIL—ICE HARBOR DAM.	2763 MONUMENT DRIVE.	BURBANK	WA	99323	CORPS OF ENGINEERS, CIVIL.	CERCLA 103	17	UPDATE #31.
US ACE–CIVIL—MCNARY SUB STATION.	1910 3RD AVE	UMATILLA	OR	97882	CORPS OF ENGINEERS, CIVIL.	CERCLA 103	17	UPDATE #31.
US ARMY CORP OF ENGINEERS—PIEDMONT.	CLEARWATER LAKE	PIEDMONT	MO	63957	CORPS OF ENGINEERS, CIVIL.	CERCLA 103	19a	UPDATE #31.
DOD JOINT SYSTEMS MFG CENTER.	1155 BUCKEYE RD.	LIMA	OH	45804	ARMY	RCRA 3010	17	UPDATE #31.
BWXT CONVERSION SERVICES , LLC.	HOBBS ROAD	KEVIL	KY	42053	ENERGY	RCRA 3010	17	UPDATE #31.
USDOE—BPA ST JOHN SUBSTATION: SOUTH RIVERGATE POND.	45.615139, -122.765806.	PORTLAND	OR		ENERGY	CERCLA 103	17	UPDATE #31.
US CDP (FEMA/DHS)—Bldg 40/900 Area.	40 Twill Lane	ANNISTON	AL	36205	HOMELAND SECURITY.	CERCLA 103	1	UPDATE #31.
US CDP (FEMA/DHS)-COBRA TRAINING FACILITY.	WALT PHILLIPS ROAD	ANNISTON	AL	36205	HOMELAND SECURITY.	RCRA 3010	17	UPDATE #31.
US CG—HISTORIC ATON 37 LAKE COEUR D'ALENE.	T50N R4W SEC 23	COEUR D'ALENE	ID	83814	HOMELAND SECURITY.	RCRA 3010	17	UPDATE #31.
USCG—ARGO INCIDENT NUMBER 1510–22–2322.	41 38.359 N, 82.599 W	KELLEYS ISLAND.	OH	43438	HOMELAND SECURITY.	RCRA 3010	17	UPDATE #31.
FWS SEVILLETA NWR	NM INTERSTATE I–25, EXIT 169.	SOCORRO	NM	87801	INTERIOR	RCRA 3010	17	UPDATE #31.
US BLM—DAVENPORT	T25N R35E SECTION 15 W1/2SW1/4.	DAVENPORT	WA	99212	INTERIOR	RCRA 3010	17	UPDATE #31.
US BLM—HAINES MP7 DUMPSITE.	MILE POST 7, HAINES HIGHWAY.	HAINES	AK	99827	INTERIOR	RCRA 3010	17	UPDATE #31.
US BLM—HOWARD MOUNTAIN BURN SITE.	T6S R34E SEC 31 SESE 2.5 MI W OF POC TRAIL CREEK RD.	POCATELLO	ID	83204	INTERIOR	RCRA 3010	17	UPDATE #31.
US BLM—MAC D MERCURY MINE & RETORT SITE.	T2N R5W SEC 6 NESE	HOMEDALE	ID	83705	INTERIOR	RCRA 3010	17	UPDATE #31.
Federal Bureau of Prisons—Beaumont Medium Federal Prison.	5830 KNAUTH RD	BEAUMONT	TX	77705	JUSTICE	CERCLA 103	17	UPDATE #31.
SMITHSONIAN PAUL GARBER FACILITY.	3904 OLD SILVER HILL ROAD.	SUITLAND	MD	20746	Smithsonian Board of Regents.	RCRA 3010	17	UPDATE #31.
FEDERAL AVIATION ADMINISTRATION—(BPT).	5040 WEST AIRLINE DR.	BEAUMONT	TX	77705	TRANSPORTATION	CERCLA 103	17	UPDATE #31.
FEDERAL AVIATION ADMINISTRATION—(IAH).	4215 WILL CLAYTON PARKWAY.	Houston	TX	77032	TRANSPORTATION	CERCLA 103	17	UPDATE #31.
FEDERAL AVIATION ADMINISTRATION—Fort Worth.	13800 FAA ROAD	Fort Worth	TX	76155	TRANSPORTATION	CERCLA 103	17	UPDATE #31.
US FAA–GUAM	1775 ADMIRAL SHERMAN BLVD, FAA GUAM ZUA CERAP SSC.	BARRIGADA	GU	96913	TRANSPORTATION	RCRA 3010	17	UPDATE #31.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #31—ADDITIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
UNITED STATES POSTAL SERVICE—PNDC.	4025 West Reno Ave	Oklahoma City	OK	73107	USPS	CERCLA 103	17	UPDATE #31.
USPS—SVC BARRIGADA GUAM.	489 ARMY DR	BARRIGADA	GU	96913	USPS	RCRA 3010	17	UPDATE #31.
USPS—TECUMSEH	BROADWAY STREET	TECUMSEH	NE	68450	USPS	RCRA 3010	17	UPDATE #31.
JOHN J. PERSHING VAMC	1500 N WESTWOOD BLVD.	POPLAR BLUFF	MO	63901	VETERANS AFFAIRS	RCRA 3010	17	UPDATE #31.
MI DEPT/MILITARY & VETERANS AFFAIRS.	50 SABRE AVE 110 MSG/EM.	BATTLE CREEK	MI	49037	VETERANS AFFAIRS	RCRA 3010	17	UPDATE #31.
US VA—WALLA WALLA MEDICAL CENTER.	77 WAINWRIGHT DR	WALLA WALLA	WA	99362	VETERANS AFFAIRS	RCRA 3010	17	UPDATE #31.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #31—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
FRESNO AUCRAD	5168 EAST DAKOTA AVE.	FRESNO	CA	93727	AIR FORCE	RCRA 3010	2	12/15/89
PACIFIC BELL	SOUTH FORK MOUNTAIN.	REDDING	CA	96601	AIR FORCE	RCRA 3010	2	09/27/91
CARSON CITY LANDFILL		ORMSBY COUNTY.	NV		INTERIOR	CERCLA 103	2	12/12/91
NAVY REMEDIATION AT TELEDYNE TURBINE ENG.	1330 LASKEY RD	TOLEDO	OH	43612	NAVY	RCRA 3010	3	03/18/13
LAULUALEL NAVAL MAGAZINE.	NAVAL MAGAZINE DEMILITARIZATION FURNACE.	WESTLOCH	HI	96860	NAVY	RCRA 3005	6	02/12/88
FORT DARUSSY MILITARY RESERVE.	KATTA ROAD AT INTERSECTION.	HONOLULU	HI	96815	ARMY	RCRA 3010	4	11/10/93
HERLONG MUNITIONS	705 HALL STREET	SUSANVILLE	CA	96130	DEFENSE	RCRA 3016	6	02/05/93
NAVAL REGIONAL MEDICAL CENTER.	17TH AND PATTISON AVE.	PHILADELPHIA	PA	19145	NAVY	RCRA 3010	1, 6	02/12/88
SAINT HELENA ANNEX	SOUTH MAIN STREET	NORFOLK	VA	23523	NAVY	RCRA 3010	1,6	12/15/89
CANONSBURG FIELD		CANONSBURG	PA		ARMY	CERCLA 103	8	11/10/93
GENERAL SERVICES ADMINISTRATION.	212 S THIRD AVE	MINNEAPOLIS	MN	55401	GENERAL SERVICES ADMINISTRATION.	RCRA 3010	1	12/29/00
RIVERDALE DEFENSE MAPPING AGENCY HTC.	6501 LAFAYETTE AVE CENT REC AR.	RIVERDALE	MD	20737	DEFENSE	RCRA 3010	1	08/22/90
MANCHESTER HOUSING AND DEVELOPMENT AUTHORITY.	83 TRAHAN STREET	MANCHESTER	NH	3103	HOUSING AND URBAN DEVELOPMENT.	RCRA 3010	2	11/10/93

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #31—CORRECTIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
JOHNSTON ATOLL NATIONAL WILDLIFE REFUGE.	P.O. BOX 50167	HONOLULU	HI	96850	ARMY	RCRA 3010	20A, 21	12/12/88
JOHNSTON ATOLL NATIONAL WILDLIFE REFUGE.	16.728611 N, 169.534167 W.	JOHNSTON ATOLL	JOHNSTON ATOLL		INTERIOR	RCRA 3010		12/12/88

[FR Doc. 2017–11693 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2014–0785; FRL–9961–27–Region 9]

Notice of Approval of Clean Air Act Prevention of Significant Deterioration Permit for the McElmo Creek Unit Oil Production Facility (PSD Permit No. NU 05–01)

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of final agency action.

SUMMARY: This notice announces that on September 30, 2016, the Environmental Protection Agency (EPA), Region 9, issued a final permit decision to Resolute Natural Resources Company to amend the Prevention of Significant Deterioration (PSD) permit for the McElmo Creek Unit Oil Production Facility (MCU Facility) (PSD Permit No. NU 05–01), an existing oil and gas production operation. The final permit decision was issued pursuant to the PSD regulations.

DATES: In accordance with 40 CFR 124.15(b), the final permit decision became effective on November 30, 2016.

Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of June 6, 2017.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2014–0785 for this action. Key portions of the administrative record for this PSD permit decision (including the final PSD permit decision, all public comments, the EPA's responses to the public comments, and additional supporting information) are available through a link at our Web site, *http://www.epa.gov/caa-permitting/prevention-significant-deterioration-psd-permits-issued-region-9,* or at *http://www.regulations.gov* (Docket ID No. EPA–R09–OAR–2014–0785). Documents are also available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, California 94105–3901. To arrange for viewing of these documents, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Due to building security procedures, at least 48 hours advance notice is required.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, EPA Region 9, Air Division (AIR–3), (415) 947–4156, *kelly.shaheerah@epa.gov.*

NOTICE OF FINAL ACTION AND SUPPLEMENTARY INFORMATION: On September 30, 2016, the EPA Region 9 issued a final permit decision to Resolute Natural Resources Company to amend the PSD permit for the MCU Facility (PSD Permit No. NU 05–01). The MCU Facility is an existing oil and gas production operation located within the Four Corners Area on the Navajo Nation Indian Reservation near the town of Aneth, San Juan County, Utah.

The EPA amended the PSD permit, in accordance with PSD regulations (40 CFR 52.21), to incorporate pollution limits, terms, and conditions for the already existing Main Flare at the MCU Facility pursuant to a federal Consent Decree (*United States* v. *Mobil Exploration and Producing U.S. Inc.,* Case No. 2:05–CV–319, filed June 8, 2005). These pollution limits, terms, and conditions include best available control technology emission limitations for nitrogen oxides, carbon monoxide, sulfur dioxide, and volatile organic compounds.

Additionally, the EPA amended the PSD permit to remove and update other applicable requirements in the MCU Facility's PSD permit due to equipment that has been shut down and removed from the site. Air pollution emissions as a result of this permit action would not cause or contribute to violations of any National Ambient Air Quality Standards or any applicable PSD increments. This permit action does not authorize any new construction or modification of existing equipment at the MCU Facility.

EPA received comments from eight commenters, including the Resolute Natural Resources Company. In accordance with 40 CFR 124.15(b), the final PSD permit decision issued on September 30, 2016, became effective on November 30, 2016. Pursuant to 40 CFR 124.19(l)(1), a petition to EPA's Environmental Appeals Board (EAB) under 40 CFR 124.19(a) is a prerequisite to seeking judicial review of this final agency action. No petition for review was properly and timely filed with EAB under 40 CFR 124.19(a).

Dated: March 23, 2017.

Elizabeth Adams,

Acting Director, Air Division, Region IX.

[FR Doc. 2017–11691 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0214; FRL–9962–79]

FIFRA Scientific Advisory Panel; Notice of Public Meeting; Request for Ad Hoc Expert Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the ''Continuing Development of Alternative High-Throughput Screens to Determine Endocrine Disruption, Focusing on Androgen Receptor, Steroidogenesis, and Thyroid Pathways''.

DATES: The meeting will be held on November 28, 2017 to November 30, 2017, from approximately 9 a.m. to 5 p.m.

Comments. Written comments should be submitted on or before September 28, 2017. FIFRA SAP may not be able to fully consider written comments submitted after this date. Requests to make oral comments should be submitted on or before November 7, 2017 by contacting the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc expert members of FIFRA SAP for this meeting should be provided on or before July 21, 2017.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP Web site at *https://www.epa.gov/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to allow EPA time to process your request.

ADDRESSES: *Meeting:* The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0214, by one of the following methods:

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

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

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, DFO, Office of Science

Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6428; email address: *peterson.todd@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may also be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also 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 CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2017–0214 in the subject line on the first page of your request.

1. *Written comments.* Written comments should be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before September 28, 2017, to provide FIFRA SAP the time necessary to consider and review the written comments. FIFRA SAP may not be able to fully consider written comments submitted after September 28, 2017.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to FIFRA SAP to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before November 7, 2017, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until November 7, 2017 and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. Oral comments before FIFRA SAP are limited to approximately 5 minutes unless arrangements have been made prior to November 7, 2017. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. In addition, each speaker should bring 15 copies of his or her oral remarks and presentation slides (if required) for distribution to FIFRA SAP at the meeting by the DFO.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc expert members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates, both U.S. citizens and permanent residents who can demonstrate that they are actively seeking U.S. citizenship will be considered. For each meeting, FIFRA SAP staff routinely solicits from the public nominations of prospective expert candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Toxicology, physiology, biochemistry, endocrinology (clinical and research), epidemiology, with an emphasis on androgens, steroidogenesis, thyroid—particularly ways these endocrine systems can be disrupted and the means to detect disruption. Expertise in the development of computational models, high-throughput assays, as well as biostatistics and performance-based validation, are also desired. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before July 21, 2017. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before that date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the potential Panel member to fully participate in the Panel's review, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each Panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. In order to have the collective breadth of experience needed to address the Agency's peer review charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634—Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked

to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *https://www.epa.gov/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. The FIFRA SAP is assisted in their reviews by ad hoc participation from the Science Review Board (SRB). As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists.

B. Public Meeting

The United States EPA's Endocrine Disruptor Screening Program uses appropriate validated test systems and other scientifically-relevant information to screen and test for endocrine disrupting chemicals. Since the issuance of the **Federal Register** Notice (entitled, ''Use of High Throughput Assays and Computational Tools; Endocrine Disruptor Screening Program; Notice of Availability and Opportunity for Comment'') on June 19, 2015 (FRL–9928–69), EPA has continued the development of high throughput assays and computational tools for both the detection of the potential to disrupt the endocrine system, as well as to estimate levels of exposure. The focus of this meeting is the SAP's review and comment on the Agency's proposed high-throughput computational model of androgen receptor pathway activity as an alternative to the current Tier 1 androgen receptor assay (OCSPP 890.1150: Androgen Receptor Binding Rat Prostate Cytosol). Additionally, the SAP will assess the Agency's progress in the development of a high-throughput model of steroidogenesis to be used as an alternative to the current Tier 1 steroidogenesis assay (OCSPP 890.1550: Steroidogenesis Human Cell Line—H295R); and proposed adverse outcome pathway-based framework for screening chemicals for potential thyroid disruption. The use of these methods will accelerate the pace of screening, reduce animal testing, and significantly decrease costs associated with screening.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, charge/questions to FIFRA SAP, and related supporting materials will be available on or before August 14, 2017. In addition, a list of candidates under consideration as prospective ad hoc panelists for this meeting will be available for public comment by August 22, 2017 (see link for listing of nominees to appear on August 4, 2017 at: *https://www.epa.gov/sap*). Comments should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 6, 2017). Your comments will be placed in the public docket by the DFO. You may obtain electronic copies of most meeting documents, including FIFRA SAP composition (*i.e.,* members and ad hoc members for this meeting) and the meeting agenda, at *http://www.regulations.gov* and the FIFRA SAP Web site at *https://www.epa.gov/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Docket at *http://www.regulations.gov.*

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.*

Dated: May 26, 2017.

Stanley Barone, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 2017–11694 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9961–58–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Utah

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Utah's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, section 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements. On March 28, 2017, the Utah Department of Environmental Quality (UT DEQ) submitted an application titled ''NPDES e-Reporting Tool'' for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed UT DEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the

application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Utah's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 122, 125, 403–471, 501, and 503, is being published in the **Federal Register:**

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;

Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution; and

Part 501—State Sludge Management Program Regulations.

UT DEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Matthew Leopard,

Director, Office of Information Management.

[FR Doc. 2017–11629 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL- 9962–81–OA]

Notification of a Public Meeting of the Science Advisory Board (SAB) Risk and Technology Review (RTR) Methods Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board (SAB) Risk and Technology Review (RTR) Methods Panel to peer review EPA's draft *Screening Methodologies to Support Risk and Technology Reviews (RTR) (External Review Draft May, 2017).*

DATES: The public meeting will be held on Thursday, June 29, 2017, from 9:00 a.m. to 5:00 p.m. (Eastern Time) and Friday, June 30, 2017, from 9:00 a.m. to 4:00 p.m. (Eastern Time).

Location: The public meeting will be held at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public meeting may contact Dr. Bryan Bloomer, Designated Federal Officer (DFO), at (202) 564–4222 or *bloomer.bryan@epa.gov.* General information about the SAB, as well as, any updates concerning the meetings announced in this notice, may be found on the SAB Web page at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB RTR Methods Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA Policy, notice is hereby given that the SAB RTR Methods Panel will hold a public face-to-face meeting to peer review EPA's draft *Screening Methodologies to Support Risk and Technology Reviews (RTR) (External Review Draft May, 2017).* The Panel will provide advice to the Administrator through the Chartered SAB.

EPA's Office of Air Quality Planning and Standards (OAQPS) has requested that the SAB conduct a review of the methods for conducting Risk and Technology Review Assessments in conjunction with assessments of residual risk required by the Clean Air Act. These assessments evaluate the effects of industrial emissions of hazardous air pollutants (HAPs) on public health and the environment. Additional information about this SAB advisory activity can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/RTR%20Screening%20Methods%20Review?OpenDocument.*

Technical Contacts: Any technical questions concerning EPA's draft *Screening Methodologies to Support Risk and Technology Reviews (RTR) (External Review Draft May, 2017),* should be directed to Chris Sarsony, EPA Office of Air and Radiation, Office of Air Quality Planning and Standards, at (919) 541–4843 or *sarsony.chris@epa.gov.*

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda, and other materials will be available on the SAB Web page at *http://www.epa.gov/sab/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the panel and the EPA review documents, and/or the group conducting the activity, for the SAB to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments, as well as, their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Dr. Bryan Bloomer, DFO, in writing (preferably via email) at the contact information noted above by June 23, 2017, to be placed on the list of public speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by Panel members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by June 23, 2017. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the public Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Bryan Bloomer at (202) 564–4222 or *bloomer.bryan@epa.gov.* To request accommodation of a disability, please contact Dr. Bloomer preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: May 11, 2017.

Christopher S. Zarba,

Director, EPA Science Advisory Staff Office.

[FR Doc. 2017–11701 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9962–91–Region 2]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations in New Jersey, Puerto Rico, and the Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this document is to announce that between October 2, 2015 and April 11, 2017, the Region 2 Office of the Environmental Protection Agency (EPA), issued one final agency action and the New Jersey Department of Environmental Protection (NJDEP) issued three final agency actions pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations.

DATES: The effective dates for the above determinations are delineated in the chart in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jon, Environmental Engineer of the Permitting Section, Air Programs Branch, Clean Air and Sustainability Division, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, NY 10007–1866, at (212) 637–4085.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations codified at 40 CFR 52.21, the Region 2 Office of the USEPA, and the NJDEP have made final PSD determinations relative to the facilities listed below:

Name	Location	Project	Agency	Final action	Date
B.L. England Generating Station.	Mamora, New Jersey.	The approval is for a second PSD permit extension to commence construction on a 430–MW combined-cycle project consisting of one Siemens STG6–8000H combined-cycle combustion turbine generator (CTG), one heat recovery steam generator (HRSG) equipped with duct burner, one existing steam turbine electric generator (STG) and one auxiliary boiler.	NJDEP	Second PSD Permit Extension Granted.	November 22, 2015 (effective date of the second PSD permit extended for eighteen additional months from April 12, 2016 until October 12, 2017).
PSEG Fossil LLC Sewaren Generating Station.	Sewaren, New Jersey.	Construction of one General Electric (GE) 7HA.02 Combined-Cycle Combustion Turbine (CCCT) nominally rated at 585 MW, with a maximum heat input rate of 3,311 MMBtu/hr (HHV) when firing natural gas, and 3,452 MMBtu (HHV) when firing ultra low sulfur diesel (ULSD). The CCCT will be equipped with other ancillary equipment such as a duct burner, auxiliary boiler, an emergency diesel fire pump, an emergency diesel generator, and a 3-cell auxiliary wet mechanical draft cooling tower.	NJDEP	New PSD Permit	March 10, 2016.
Middlesex Energy Center.	Sayreville, New Jersey.	Construction of a new 560 MW combined-cycle facility. The proposed facility will consist of one GE 7HA.02 combustion turbine with a 599 MMBtu/hr duct burner. Ancillary equipment includes an auxiliary boiler, a wet mechanical draft cooling tower, an emergency generator, a fire pump, and tanks for fuel oil and ammonia.	NJDEP	New PSD Permit	July 19, 2016.
Energy Answers, LLC.	Arecibo, Puerto Rico.	Second extension of the deadline for commencing construction of the Arecibo Puerto Rico Renewable Energy Project which consists of two 1,050 tons per day (each) refuse-derived fuel municipal waste combustors, a 77 megawatt steam turbine electrical-generator, and other ancillary equipment.	EPA	Second PSD Permit Extension Granted.	April 10, 2017 (also date that first PSD permit extension expired; now extended for five additional months until September 10, 2017).

This document lists only the facilities that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

U.S. Environmental Protection Agency, Region 2 Office, Air Programs Branch—25th Floor, 290 Broadway, New York, New York 10007–1866, (212) 637–4085.

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Air Quality Permitting Element, Bureau of Preconstruction Permits, 401 East State Street, Trenton, New Jersey 08625, (609) 777–0286.

With respect to the final PSD permits for PSEG Fossil LLC Sewaren Generating Station and the Middlesex Energy Center, pursuant to 40 CFR 124.19(l), a prerequisite to seeking judicial review of the determination under section 307(b)(1) of the Clean Air Act (the Act), 42 U.S.C. 7607(b)(1), is

that parties must have previously filed a petition with the EPA Environmental Appeals Board under 40 CFR 124.19(a). If the prerequisite has been met, review may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which the determination is published in the **Federal Register**. With respect to the PSD permit extensions, pursuant to section 307(b)(1) of the Clean Air Act, judicial review of this extension decision may be sought by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, the determinations in this document shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: May 8, 2017.

Walter Mugdan,

Acting Regional Administrator, Region 2.

[FR Doc. 2017–11704 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards 52

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: *Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) 52, *Tax Expenditures.*

ADDRESSES: The Statement is available on the FASAB Web site at *http://www.fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: May 31, 2017.

Wendy M. Payne,

Executive Director.

[FR Doc. 2017–11689 Filed 6–5–17; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 17–05]

CMI Distribution Inc. v. Service by Air, Inc., Radiant Customs Services Inc. (Formerly Known as SBA Consolidators, Inc.) and Las Freight Systems Ltd.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by CMI Distribution Inc., hereinafter ''Complainant,'' against Service by Air, Inc., Radiant Customs Services Inc., (formerly known as SBA Consolidators, Inc.), and Las Freight Systems Ltd., hereinafter ''Respondents.'' Complainant states it is a ''corporation organized and existing under the laws of Illinois.'' Complainant alleges that: Respondent Service by Air, Inc. is a ''corporation organized and existing under the laws of New York'' and was ''an OTI . . . subject to regulation by the FMC''; Respondent Radiant Customs Services Inc. is a ''corporation organized and existing under the laws of New York'' and a Commission licensed non-vessel-operating common carrier (NVOCC); and Respondent Las Freight Systems Ltd. ''is a Taiwanese private limited company'' and a Commission registered NVOCC.

Complainant states that they ''engaged Respondents to provide transportation of more than 60 shipments (the Shipments)'' from China to Illinois between April 2014 and June 2015. Complainant alleges that they ''assessed more than $400,000 in demurrage or storage fees associated with the Shipments,'' but the Respondents ''have been unwilling to provide details regarding the amounts of demurrage or storage fees charged'' regarding those shipments. Complainant states that while it ''repeatedly questioned and challenged the level of demurrage charges on the Shipments, it was forced to pay those charges in order to gain release of the shipments.'' Complainant alleges that the Respondents violated the Shipping Act by acting as an OTI without a license in the case of Respondent Service by Air in violation of 46 U.S.C. 40901, failure to observe just and reasonable practices in violation of 46 U.S.C. 41102 (c), failure to provide service in accordance with rates, charges, and rules contained in a published tariff in violation of 46 U.S.C. 41102(2)(c), and failure to maintain a tariff in violation of 46 U.S.C. 40501.

Complainant seeks reparations and other relief. The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/17-05/.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by May 31, 2018, and the final decision of the Commission shall be issued by December 14, 2018.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–11626 Filed 6–5–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011961–023.

Title: The Maritime Credit Agreement.

Parties: COSCO Container Lines Company, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Maersk Line A/S; Willenius Wilhelmsen Logistics AS; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment deletes United Arab Shipping Company (S.A.G.) as a party to the Agreement.

Agreement No.: 012485.

Title: CMA CGM/Marinex Cargo Line Puerto Rico—Saint Maarten Space Charter Agreement.

Parties: CMA CGM S.A. and Marinex Cargo Line Inc.

Filing Party: Draughn Arbona, Senior Counsel; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The Agreement authorizes CMA CGM S.A. to charter space to Marinex Container Line on certain vessels CMA CGM operates in the trade between Puerto Rico and Saint Maarten.

By Order of the Federal Maritime Commission.

Dated: June 1, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–11658 Filed 6–5–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule'' or ''Rule''). That clearance expires on November 30, 2017.

DATES: Comments must be submitted by August 7, 2017.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Room 8607, Washington, DC 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Franchise Rule, 16 CFR part 436 (OMB Control No. 3084–0107).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision provided in a format that facilitates comparisons of different franchise offerings. The Rule requires that franchisors disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Amendments to the Rule promulgated on March 30, 2007, which took effect after a one-year phase-in on July 1, 2008, merged the Rule's disclosure requirements with the disclosure format accepted by 15 states that have franchise registration or disclosure laws.[1] The amended Rule has significantly minimized any compliance burden beyond what is already required by state law.

The amended Rule requires franchisors to furnish prospective purchasers with a Franchise Disclosure Document (''FDD'') that provides information relating to the franchisor, its business, the nature of the proposed franchise, and any representations by the franchisor about financial performance regarding actual or potential sales, income, or profits made to a prospective franchise purchaser. The franchisor must preserve materially different copies of its FDD for 3 years, as well as information that provides a reasonable basis for any financial performance representation it elects to make. These requirements are subject to the PRA and underlie the Commission's pursuit of renewed OMB clearance.

Estimated annual hours burden: 16,750 hours.

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 2,500 sellers of franchises covered by the Rule, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.[2] Commission staff's burden hour estimate reflects the incremental tasks that the Rule may impose beyond the information and recordkeeping requirements imposed by state law and/or followed by franchisors who have been using the FDD disclosure format nationwide. This estimate likely overstates the actual incremental burden because some franchisors, for various reasons, may not be covered by the Rule (*e.g.,* they sell only franchises that qualify for the Rule's large franchise investment exemption of at least $1 million).

Staff estimates that the average annual disclosure burden to update existing disclosure documents will be three hours each for the 2,250 established franchisors, or 6,750 hours cumulatively for them, and 30 hours apiece each year for the 250 or so new-entrant franchisors to prepare their initial disclosure documents, or 7,500 hours, cumulatively, for the latter group. These estimates parallel staff's 2014 estimates for the amended Rule.[3] No public comments were received on those prior estimates. Accordingly, the FTC retains them for this analysis subject to further opportunity for public comment.

Under the Rule, a franchisor is required to retain copies of receipts of disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome than, those imposed by the states that have franchise registration and disclosure laws. Accordingly, staff

[1] 72 FR 15544 *et seq.*

[2] This number, which was also used in the FTC's 2014 clearance request, appears to be consistent with the number of business format franchise offerings registered in compliance with state franchise laws, and listed in franchise directories.

[3] *See* 79 FR 41284 (Jul. 15, 2014); 79 FR 59771 (Oct. 3, 2014) (''2014 Notices'').

believes that incremental recordkeeping burden, if any, would be de minimis.

Covered franchisors also may need to maintain a record of the single additional FDD for use in non-registration states, which may differ from FDDs used in registration states. This may require as much as an additional hour of recordkeeping per year. Assuming, as FTC staff has in the past, an hour of incremental recordkeeping per covered franchisor, this yields an additional cumulative total of 2,500 hours for all covered franchisors.

Based on the above assumptions and estimates, average annual burden for new and established franchisors during a prospective three-year clearance would be 16,750 hours ((30 hours of annual disclosure burden × 250 new franchisors) + (3 hours of average annual disclosure burden × 2,250 established franchisors) + (1 hour of annual recordkeeping burden × 2,500 franchisors)).

Estimated annual labor cost burden: $3,600,000.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are estimated averages.

Commission staff anticipates that an attorney will prepare the disclosure document. Applying the above assumptions to an estimated hourly attorney rate of $250 [4] yields the following annual totals: $7,500 (30 hours × $250) per new franchisor (or, $1,875,000, cumulatively, for 250 new franchisors) and $750 (3 hours × $250) per established franchisor (or, $1,687,500, cumulatively, for 2,250 established franchisors).

The FTC additionally anticipates that recordkeeping under the Rule will be performed by clerical staff at approximately $15 per hour.[5] Thus, 2,500 hours of recordkeeping burden per year for all covered franchisors will amount to a total annual labor cost of $37,500.

Cumulatively, then, total estimated labor cost under the Rule is $3,600,000 (($7,500 attorney costs × 250 new franchisors = $1,875,000) + ($750 attorney costs × 2,250 established franchisors = $1,687,500) + ($15 clerical costs × 2,500 franchisors = $37,500)).

Estimated non-labor costs: $8,000,000

In developing cost estimates initially for this Rule, FTC staff consulted with practitioners who prepare disclosure documents for a cross-section of franchise systems. The FTC believes that its cost estimates remain representative of the costs incurred by franchise systems generally. In addition, many franchisors establish and maintain Web sites for ordinary business purposes, including advertising their goods or services and to facilitate communication with the public. Accordingly, any costs franchisors would incur specifically as a result of electronic disclosure under the Rule appear to be minimal.

As set forth in the 2014 Notices, FTC staff estimates that the non-labor burden incurred by franchisors under the Franchise Rule differs based on the length of the disclosure document and the number of them produced. Staff estimates that 2,000 franchisors (80% of total franchisors covered by the Rule) will print and mail 100 disclosure documents at $35 each. Thus, these franchisors would each incur an estimated $3,500 in printing and mailing costs. Staff estimates that the remaining 20% of covered franchisors (500) will transmit 50% of their 100 disclosure documents electronically, at $5 per electronic disclosure. Thus, these franchisors will each incur $2,000 in distribution costs (($250 for electronic disclosure [$5 for electronic disclosure × 50 disclosure documents]) + ($1,750 for printing and mailing [$35 for printing and mailing × 50 disclosure documents])).

Accordingly, the cumulative annual non-labor costs for the Rule is approximately $8,000,000 (($3,500 printing and mailing costs × 2,000 franchisors = $7,000,000) + ($250 electronic distribution costs + $1,750 printing and mailing costs) × 500 franchisors = $1,000,000)).

Request for Comment: You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before August 7, 2017. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW., 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at *https://www.ftc.gov/,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form,

[4] Commission staff believes this is a reasonable proxy for mean hourly attorney rates for franchisor consultation on compliance with the Rule's disclosure and recordkeepings requirements.

[5] Based on mean hourly wages for file clerks found in ''Occupational Employment and Wages—May 2016,'' U.S. Department of Labor, released March 31, 2017, Table 1, *available at https://www.bls.gov/news.release/ocwage.nr0.htm.* In contrast to labor costing above for attorneys, *see* note 4 *supra* and accompanying text, FTC staff has drawn upon BLS wage data for file clerks because staff believes it presents a representative proxy for recordkeeping tasks under the Rule. The mean hourly wage rate for ''lawyers'' within this BLS table, however, is just $67.25, which staff believes greatly understates the hourly cost for lawyer consultation tied to the Rule.

must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Web site to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 7, 2017. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2017–11600 Filed 6–5–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of one AHRQ Subcommittee Meeting by Telephone Conference.

SUMMARY: The subcommittee listed below is part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at this meeting.

Name of Subcommittee: Health Care Research Training 2.

DATES: July 13, 2017 (Open from 1:00 p.m. to 1:30 a.m. and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality, 5600 Fishers Lane, Conference Room TBD, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: (to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting.)

Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research Education and Priority Populations, AHRQ, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427–1554.

SUPPLEMENTARY INFORMATION: This meeting will be closed to the public in accordance with 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces the meeting of the scientific peer review group listed above, which is a subcommittee of AHRQ's Health Services Research Initial Review Group Committee. This subcommittee meeting will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6) 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.

Agenda items for these meetings are subject to change as priorities dictate.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2017–11587 Filed 6–5–17; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office for State, Tribal, Local and Territorial Support (OSTLTS)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, CDC/Agency for Toxic Substances and Disease Registry (ATSDR), announces the following meeting and Tribal Consultation Session:

Name: CDC/ATSDR Tribal Advisory Committee (TAC) Meeting and 17th Biannual Tribal Consultation Session.

Dates And Times:

August 8, 2017

- 8:00–9:00 a.m., CDT—Tribal Caucus (Open only to elected tribal leaders and by invitation)
- 9:00 a.m.–5:00 p.m., CDT—TAC Meeting (Open to the public)

August 9, 2017

- 8:00–9:00 a.m., EDT—Tribal Caucus (Open only to elected tribal leaders and by invitation)
- 9:00 a.m.–3:00 p.m., CDT—TAC Meeting (Open to the public)
- 3:00–5:00 p.m., CDT—Tribal Consultation Session (Open to the public).

Please note that the TAC reserves the right to call a tribal caucus at any time during the public portions of the TAC meeting, and those who are not elected tribal leaders will be asked to step out of the meeting room during any ad hoc caucus periods.

Place: The CDC/ATSDR TAC Meeting and Biannual Tribal Consultation Session will be held at the Artesian Hotel, 1001 W. 1st Street, Sulphur, OK 73086.

Status: The meeting and consultation session are in-person only and open to the public except during tribal caucus as described in the time and date section. Attendees must pre-register for the TAC meeting and/or Tribal Consultation Session by 5:00 p.m. (EDT) on Friday, July 7, 2017, at the following link: *www.cdc.gov/tribal/meetings.html.*

Purpose: The purpose of the TAC and consultation meetings is to advance CDC/ATSDR support for and collaboration with American Indian and Alaska Native (AI/AN) tribes and to improve the health of AI/AN tribes by pursuing goals that include assisting in eliminating the health disparities faced by AI/AN tribes; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of AI/ANs; and promoting health equity for all Indian people and communities. To advance these goals, CDC/ATSDR conducts government-to-government consultations with elected tribal officials or their authorized representatives. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding.

Matters for Discussion: This TAC Meeting and Biannual Tribal Consultation Session will provide opportunities for tribal leaders to speak openly about the public health issues affecting their tribes. These meetings will include discussions about tribal

priorities for the CDC/ATSDR, public health capacity in Indian Country, AI/AN public health concerns, budget and funding opportunities, and programmatic highlights, among other topics. The discussion topics are subject to revision as priorities change.

Tribes also will have an opportunity to present testimony about tribal health issues during the Tribal Consultation Session. All tribal leaders are encouraged to submit written testimony by 5:00 p.m. (EDT) Friday, July 7, 2017, to Captain Carmen Clelland, Associate Director for the Tribal Support Unit, OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta, GA 30341–3717, or email to *TribalSupport@cdc.gov.* Tribal leaders can find guidance to assist in developing tribal testimony for CDC/ATSDR at *www.cdc.gov/tribal/consultation/index.html.*

Based on the number of tribal leaders giving testimony and the time available, it may be necessary to limit the time for each presenter. However, all submitted and written testimony will be entered in to the record.

Information about the TAC, CDC/ATSDR's Tribal Consultation Policy, and previous meetings can be found at *www.cdc.gov/tribal.*

Contact person for more information: Captain Carmen Clelland, Associate Director, Tribal Support Unit, at *cclelland@cdc.gov* or 404.498.2205.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–11613 Filed 6–5–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Information Comparison with Insurance Data.

OMB No.: 0970–0342.

Description: The Deficit Reduction Act of 2005 amended Section 452 of the Social Security Act (the Act) to authorize the Secretary, through the Federal Parent Locator Service (FPLS), to conduct comparisons of information concerning individuals owing past-due child support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments. 42 U.S.C. 652(m)(1).

An insurer may choose to participate in the data comparison using one of the following methods:

- An insurer submits information concerning claims, settlements, awards, and payments to the federal Office of Child Support and Enforcement (OCSE). OCSE compares the information with parents who owe past-due support.
- OCSE sends a file containing information about parents who owe past-due support to the insurer, or their agent to compare with their claims, settlements, awards, and payments. The insurer or their agent sends the matches to OCSE.

On a daily basis, OCSE sends the results of the comparison in the Insurance Match Response Record to child support agencies responsible for collecting past-due support. Child support agencies use the matches to collect past-due support from the insurance proceeds.

The information collection activities pertaining to the information comparison with insurance data are authorized by:

(1) 42 U.S.C. 652(a)(9) which requires the federal Office of Child Support Enforcement (OCSE) to operate the FPLS established by 42 U.S.C. 653(a)(1); and

(2) 42 U.S.C. 652(m) which authorizes OCSE, through the FPLS, to compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments, and to furnish information resulting from the data matches to the state child support agencies responsible for collecting child support from the individuals.

Respondents: Insurers or their agents, including the U.S. Department of Labor and state agencies administering workers' compensation programs, and the Insurance Services Office (ISO).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Insurance Match File: Monthly Reporting Electronically	22	12	0.083	22
Insurance Match File: Weekly Reporting Electronically	7	52	0.083	30
Insurance Match File: Daily Reporting Electronically	2	251	0.083	42
Match File: Daily Reporting Manually	80	251	0.1	2,008
Total				2,102

Estimated Total Annual Burden Hours: 2,102 hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: ACF Reports Clearance Officer. Email address *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Report Clearance Officer.

[FR Doc. 2017–11589 Filed 6–5–17; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Nurse Education, Practice, Quality and Retention—Veteran's Bachelor of Science Degree in Nursing Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of single-source awards for Nurse Education, Practice, Quality and Retention—Veteran's Bachelor of Science Degree in Nursing Program.

SUMMARY: HRSA is providing single-source awards to two cohorts of current Nurse Education, Practice, Quality and Retention (NEPQR)—Veteran's Bachelor of Science Degree in Nursing (VBSN) Program recipients. The purpose of the NEPQR–VBSN program is to provide training to veterans and equip them with the tools necessary to successfully transition into civilian nurse professional careers. These awards will enable NEPQR–VBSN grantees to continue to train the 672 veteran students who are in the middle of their degree studies. Of this number, approximately 120 students are expected to graduate in 2018, take the NCLEX–RN licensing exam, and transition as highly skilled BSN nurses into the civilian workforce. Approximately $6.2 million is available for single-source awards to these NEPQR–VBSN grantees.

FOR FURTHER INFORMATION CONTACT: Kasey Farrell, Nursing Education and Practice Branch Chief, Division of Nursing and Public Health, Bureau of Health Workforce, Health Resources and Services Administration, 5600 Fishers Lane, 11N110, Rockville, Maryland 20857, Phone: (301) 443–0188, Email: *kfarrell@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Intended Recipients of the Awards:

University of Alabama, Birmingham
Florida International University (will receive two awards)
University of South Florida
Jacksonville University
Davenport University
Research Foundation of State University of New York, Stony Brook
University of Texas at Arlington
Hampton University
Shenandoah University
National University
George Washington University
University of Hawaii, Manoa
University of Kentucky, Lexington
University of Michigan, Flint
University of Southern Mississippi
University of North Carolina, Greensboro
Excelsior University
Duquesne University
Francis Marion University

Amount of Awards: $6,243,412.

Project Period: July 1, 2017, to June 30, 2018 OR September 1, 2017, to August 31, 2018.

CFDA Number: 93.359.

Authority: Sections 831 and 831A of the Public Health Service (PHS) Act.

Justification: One-year awards for NEPQR–VBSN Program recipients will enable grant recipients to support the 672 veterans enrolled in the program. For the proposed 1-year budget period, the program funds shall be used for the same purposes as the grant recipients' current statement of work (*e.g.,* supporting, teaching and graduating veteran students and developing models for preparing faculty members and other personnel to work with and teach veteran students). This single-source award will help grantees support the current veteran students enrolled in the program and align all NEPQR–VBSN grantee project periods to end in 2018.

Dated: May 30, 2017.

George Sigounas,

Administrator.

[FR Doc. 2017–11708 Filed 6–5–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White HIV/AIDS Program, Part C Early Intervention Services Grant Under the Ryan White HIV/AIDS Program

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice of Noncompetitive Single-source Award: Fiscal Year 2017 Ryan White HIV/AIDS Program (RWHAP) Part C Early Intervention Services Program Existing Geographic Service Area (EISEGA).

SUMMARY: To prevent a lapse in comprehensive HIV primary care services for persons living with HIV, HRSA will provide one-time noncompetitive single-source award to Staywell Health Care, Inc. The purpose of the RWHAP Part C EISEGA is to provide HIV primary care in the outpatient setting to targeted low income, underinsured, and uninsured people living with HIV. Pending the availability of appropriated funds, the amount of the fiscal year (FY) 2017 award will be based on the amount of the FY 2016 RWHAP Part C EISEGA award to the relinquishing recipient.

FOR FURTHER INFORMATION CONTACT: CAPT Mahyar Mofidi, DMD, Ph.D., Director, Division of Community HIV/AIDS Programs, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, 09N09, Rockville, MD 20857, Phone: (301) 443–2075, Email: *mmofidi@hrsa.gov.* For media inquiries, contact HRSA's Office of Communications at (301) 443–3376.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Staywell Health Care, Inc.

Amount of Non-Competitive Award: $426,543.

Period of Funding: April 1, 2017 through March 31, 2018, and pre-award costs from January 1, 2017–March 31, 2017.

CFDA Number: 93.918.

Authority: Section 2651–2667 of the Public Health Service Act, (42 U.S.C. 300ff–51 through 67) and section 2693 of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Act of 2009 (P.L. 111–87).

Justification: Greater Waterbury Health Network, including Waterbury Hospital Health Center, recently sold all assets to Prospect Medical Holdings. This sale was approved by state regulators and resulted in the organization becoming a for-profit entity on October 1, 2016. The for-profit Waterbury Hospital Health Center is no longer eligible to receive RWHAP Part C EISEGA funds (per Section 2652(a) of the Public Health Service Act). Staywell Health Care, Inc. is recognized by the National Committee for Quality Assurance as a Patient-Centered Medical Home. They provide primary medical care; chronic disease management, including HIV care and treatment, counseling, and mental health; lab work; and dental care to

vulnerable and underserved populations. The close proximity, comparable medical services provided, and Waterbury Hospital Health Center's relationship will Staywell Health Care, Inc., will ensure a seamless transition of RWHAP patients served by Waterbury Hospital Health Center. Up to $426,543 will be awarded to Staywell Health Care, Inc., in FY 2017, pending the availability of appropriated funds. Not issuing this award would result in the disruption of comprehensive HIV primary care and support services for low income, underinsured, and uninsured people living with HIV in the service area.

Dated: June 1, 2017.

Dr. George Sigounas,

Administrator.

[FR Doc. 2017–11707 Filed 6–5–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: 0990–0278–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0278, scheduled to expire on August 31, 2017. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before July 6, 2017.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier 0990–0278–30D for reference.

Type of Collection Request: Extension of Currently Approved Collection

Title of the Collection: Federalwide Assurance Forms—Extension OMB No. 0990–0278, Assistant Secretary for Health, Office for Human Research Protections.

Abstract: The Office for Human Research Protections is requesting a three year extension of the Federalwide Assurance (FWA). The FWA is designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS Regulations for the protection of human subjects at 45 CFR 46.103. The respondents are institutions engaged in human subjects research that is conducted or supported by HHS.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local, or Tribal Governments;

ESTIMATED ANNUALIZED BURDEN IN HOURS TABLE

Form name	Number of respondents	Number of responses per respondent	Hours per response	Response burden hours
Federalwide Assurance (FWA)	14,000	2.0	0.50	14,000
Total				14,000

Terry S. Clark,

Asst. Paperwork Reduction Act Clearance Officer.

[FR Doc. 2017–11583 Filed 6–5–17; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIH Pathway to Independence Awards (K99/R00).

Date: June 29, 2017.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Clinical Trials to Test the Effectiveness of Treatment, Preventive, and Services Interventions (R01).

Date: June 30, 2017.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608,

Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pilot Effectiveness Trials for Treatment, Preventive and Services Interventions (R34).

Date: June 30, 2017.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; 93.281)

Dated: May 31, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11591 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Neurological Disorders and Stroke Special Emphasis Panel; Member Conflict Review Panel.

Date: June 5, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: William Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 31, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11596 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review, Committee.

Date: June 22–23, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11598 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Network Clinical Trials.

Date: June 23, 2017.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.

Date: June 23, 2017.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Diversity F99 Review.

Date: June 28, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Grand Chicago Riverfront Hotel, 71 East Wacker Drive, Chicago, IL 60601.
Contact Person: William Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., SUITE 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 31, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11597 Filed 6–5–17; 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 (5 U.S.C. App.), 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: Population Sciences and Epidemiology Integrated Review Group; Societal and Ethical Issues in Research Study Section.
Date: June 26, 2017.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.
Date: June 27–28, 2017.
Time: 8:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.
Contact Person: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Science and Technologies.
Date: June 27, 2017.
Time: 8:00 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: 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; Member Conflict: Auditory Neuroscience.
Date: June 27–28, 2017.
Time: 8:00 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: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel;
Exploration of Antimicrobial Resistant Microbes and Antimicrobial Therapeutics.
Date: June 27–28, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.
Date: June 27–28, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology B Study Section.
Date: June 27–28, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Row Hotel, 2015 Massachusetts Avenue, Washington, DC 20036.
Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, 301–828–6146, *schwarel@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Studies in Kidney Diseases (PAR–15–161).
Date: June 27–28, 2017.
Time: 8:00 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; PAR–16–115: Optimization of Monoclonal Antibodies for Eliminating the HIV Reservoir.
Date: June 27, 2017.
Time: 9:00 a.m. to 12:00 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: Pathophysiology of Eye Diseases.
Date: June 27, 2017.
Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205, MSC 7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurogenesis and Cell Fate.
Date: June 27, 2017.
Time: 10:30 a.m. to 4:00 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; PAR15–357: Understanding Alzheimer's Disease in the Context of the Aging Brain.

Date: June 27, 2017.

Time: 10:30 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: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: June 27, 2017.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188, MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular, Cellular, and Biomechanical Determinants of Musculoskeletal Biology.

Date: June 27, 2017.

Time: 11:00 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.

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 4214, MSC 7802, Bethesda, MD 20892, 301–435–1787, *srikanth.ranganathan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Risk Prevention and Social Behavior.

Date: June 27, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pilot Clinical Trials for The Spectrum of Alzheimer's Disease.

Date: June 27, 2017.

Time: 12:00 p.m. to 5:00 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: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, Bethesda, MD 20892, 301–437–7872, *cowleshw@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 31, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11595 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting [Additional Information for the Public]

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 8, 2017.

Open: 8:00 a.m. to 12:00 p.m.

Agenda: The agenda will include opening remarks, administrative matters.

Place: National Institutes of Health, Building 31, Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Della Hann, Director, Division of Extramural Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2314, MSC 7002, Bethesda, MD 20892, (301) 496–8535.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

In order to facilitate public attendance at the open session of Council in the main meeting room, Conference Room 6, please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation, additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 1, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11703 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

Date: June 13, 2017.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Optimizing the HIV Care Continuum for Substance Abusing Populations at High-Risk and/or Living with HIV (R01).

Date: June 27, 2017.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Medications Development.

Date: July 13, 2017.

Time: 9:00 a.m. 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 31, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11593 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Blending Initiative (2248).

Date: June 27, 2017.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 31, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11594 Filed 6–5–17; 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 (5 U.S.C. App.), 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; Conference Grant Review.

Date: July 7, 2017.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 1 Democracy Plaza, 6701 Democracy Blvd. Room 1068, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.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 31, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11599 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Summer Research Education Experience Programs R25.
Date: June 20, 2017.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, Keystone Building, Room 3074, 530 Davis Drive, Research Triangle Park, NC 27713 (Telephone Conference Call).
Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Victer Grant Applications.
Date: June 22, 2017.
Time: 10:00 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, Keystone Building, Room 3118, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).
Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/ Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 31, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11592 Filed 6–5–17; 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 (5 U.S.C. App.), 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; Genome Knowledge Management, Dissemination and Outreach Centers.
Date: June 27, 2017.
Time: 10:00 a.m. to 1:00 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: Luis Dettin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, (301) 451–1327, *dettinle@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–256: Cancer-Related Behavioral Research through Integrating Existing Data.
Date: June 27, 2017.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Systemic Injury by Environmental Exposure.
Date: June 28–29, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Lorien Hotel and Spa Virginia, 1600 King St., Alexandria, VA 22314.
Contact Person: Meenakshisundar Ananthanarayanan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, Bethesda, MD 20817, 301–435–1234, *ananth.ananthanarayanan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–390: NIBIB Trailblazer Award for New and Early Stage Investigators (R21).
Date: June 28, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.
Date: June 28–29, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Best Western Tuscan Inn, 425 North Point Street, San Francisco, CA 94133.
Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dental, Microbiology and Oral Biology.
Date: June 28, 2017.
Time: 8:00 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 (Virtual Meeting).
Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.
Date: June 28–29, 2017.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious, Reproductive, Asthma and Pulmonary Conditions: Additional Applications.

Date: June 28, 2017.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: June 28–29, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–407: Emerging Epidemic Virus Research Training.

Date: June 28, 2017.

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 (Telephone Conference Call).

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences Biomedical Imaging and Bioengineering.

Date: June 28, 2017.

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: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral and Skin Systems.

Date: June 28, 2017.

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.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitations Sciences.

Date: June 28, 2017.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Systems Science and Health in the Behavioral and Social Science.

Date: June 28, 2017.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–029: Dynamic Interactions between Systemic or Non-Neuronal Systems and the Brain in Aging and in Alzheimer's Disease.

Date: June 28, 2017.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuronal and Glia Function in Neurological Disorders.

Date: June 28, 2017.

Time: 1:00 p.m. to 3:30 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: Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Toxicology.

Date: June 28, 2017.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Interdisciplinary Research to Understand the Complex Biology of Resilience to Alzheimer's Disease Risk (R01).

Date: June 28, 2017.

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 (Virtual Meeting).

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 31, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–11590 Filed 6–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the

Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Notification of Intent To Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner''—(OMB No. 0930–0369)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting a revision from the Office of Management and Budget (OMB) for approval of the Notification of Intent to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner.'' The Notification of Intent would allow SAMHSA to determine whether other practitioners are eligible to prescribe certain approved narcotic treatment medications for the maintenance or detoxification treatment of opioid addiction.

This Notification of Intent is a result of the Comprehensive Addiction and Recovery Act (Pub. L. 114–198), which was signed into law on July 22, 2016. The law establishes criteria for nurse practitioners (NPs) and physician assistants (PAs) to qualify for a waiver to prescribe covered medications. To be eligible for a waiver, the NP or PA must: Be licensed under State law to prescribe schedule III, IV, or V medications for the treatment of pain; fulfill qualification requirements in the law for training and experience; and fulfill qualification requirements in the law for appropriate supervision by a qualifying physician. SAMHSA has the responsibility to receive, review, approve, or deny waiver requests.

Practitioners who meet the statutory requirements will be eligible to prescribe only those opioid treatment medications that are controlled in Schedules III, IV, or V, under the Controlled Substance Act (CSA), that are specifically approved by the Food and Drug Administration (FDA) for the treatment of opioid addiction, and are not the subject of an ''adverse determination.'' The only medications that currently fulfill these requirements are ones that contain the active ingredient buprenorphine.

Below are the following changes:

Address of Practice Location (NOI Item 2 and Instructions Section)

The newly revised instructions in Section 2 now acknowledge that practitioners may practice at multiple practice locations, but may only list a practice location address that matches their DEA registration practice site. Furthermore, the revised section provides a link where practitioners may add additional practice sites.

Use of Term of ''Other Qualifying Practitioners'' (See NOI Items 1, 2, 6, and 11)

The Statute section 823(g)(2)(B)(i) refers to both physicians and mid-level providers as ''qualifying practitioners.'' Therefore in order to avoid confusion and redundancy the revised NOI Instructions Section refers to ''other qualifying practitioners,'' simply as ''practitioners.''

Use of Term of ''Supervisory Physician or Collaborative Physician'' (NOI Item 8)

The third and fourth criteria in this section created confusion regarding the relationship with a qualifying physician since providers are required to be supervised by OR work with a collaborative physician, but not both. Therefore, the word ''and'' was replaced by ''or''.

Patient Limits (Item 6: Purpose of Notification)

Language was added allowing practitioners who have treated 30 patients for at least one year to increase their patient limit to 100. This second notification to treat 100 patients was omitted in the original NOI form.

Use of Term of ''Qualifying Physician'' (NOI Item 8)

The Controlled Substance Act (CSA) requires that NPs and PAs be supervised (or collaborate with) a ''qualifying physician'' when required by state law to work with a supervising physician (see 21 U.S.C. 823(g)(2)(G)(iv)(III)). SAMHSA added a footnote with a definition of the term ''qualifying physician'' means in the context of the NOI. The term ''qualifying physician'' is specifically defined under 21 U.S.C. 823(g)(2)(G)(ii).

Certification of Qualifying Criteria (NOI Item 8)

The law specifically authorizes NPs and PAs as eligible to apply to be a ''Qualifying Other Practitioner.'' However, the proposed Notification of Intent form asks applicants to certify that they are either an ''advanced practice nurse or physician assistant.'' This difference in terminology was considered confusing to potential applicants. SAMHSA revised the first attestation in Certification of Qualifying Criteria to read ''I certify that I am either a nurse practitioner or physician assistant who satisfies the definition of a 'qualifying other practitioner.''

Identification of Training Providers (NOI Item 8)

The previous NOI required that the practitioner to write-in the name of training provider(s)' name(s). The revised NOI allows practitioners to select all applicable training providers from a drop down list.

Certification of Capacity (NOI Item 9)

The second attestation in this section was missing a verb. SAMHSA corrected this error to reflect the statutory language requiring qualifying practitioners to attest to the capacity to provide *directly or by referral.*

Certification of Maximum Patient Load (NOI Item 10)

It was clarified that the second option regarding increasing patient load to 100 refers to a second notifications (as specified in the analogous NOI form for physicians).

Privacy Act Information

This section noted that medical specialty societies be used to verify practitioner credentials. The revised NOI replaced the words ''medical specialty societies'' with ''relevant licensing boards to verify practitioners' qualifications.''

The following table is the estimated hour burden:

Purpose of submission	Number of respondents	Responses/ respondent	Burden hours	Total burden hours
Notification of Intent for Qualifying Other Practitioner to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner'' under 21 U.S.C. 823(g)(2)—Nurse Practitioners	816	1	.066	54

Purpose of submission	Number of respondents	Responses/ respondent	Burden hours	Total burden hours
Notification of Intent for Qualifying Other Practitioner to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a "Qualifying Other Practitioner" under 21 U.S.C. 823(g)(2)—Physician Assistants	590	1	.066	39
Total	1,406			93

Written comments and recommendations concerning the proposed information collection should be sent by July 6, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2017–11632 Filed 6–5–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5858–N–07]

Solicitation of Appointment Nominations to the Housing Counseling Federal Advisory Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Solicitation of Appointment Nominations.

SUMMARY: The Department of Housing and Urban Development (HUD) established the Housing Counseling Federal Advisory Committee (HCFAC) on April 14, 2015. This notice invites the public to nominate individuals to fill one vacancy representing the real estate industry for a three-year term.

DATES: Please submit nominations as soon as possible, but no later than June 21, 2017.

ADDRESSES: Nominations must be in writing and submitted via email to *HCFAC.application@hud.gov.* Individuals that do not have internet access may submit nominations to Marjorie George, Housing Program Technical Specialist, U.S. Department of Housing and Urban Development, Office of Housing Counseling, Office of Outreach and Capacity Building, 200 Jefferson Avenue, Suite 300, Memphis, TN 38103.

FOR FURTHER INFORMATION CONTACT: Marjorie George, Housing Program Technical Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 200 Jefferson Avenue, Suite 300, Memphis, TN 38103; telephone number (901) 544–4228 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339 (toll-free number). Individuals with questions may also email *HCFAC.application@hud.gov* and in the subject line write "HCFAC application question."

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Housing Counseling Federal Advisory Committee (HCFAC) is congressionally mandated to provide advice to the Office of Housing Counseling (OHC) (Pub. L. 111–203). The HCFAC provides the OHC valuable advice regarding its mission to provide individuals and families with the knowledge they need to obtain, sustain, and improve their housing through a strong national network of HUD-approved housing counseling agencies and HUD-certified counselors. The HCFAC, however, has no role in reviewing or awarding of OHC housing counseling grants and procurement contracts. The HCFAC is subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), 41 CFR parts 101–6 and 102–3, and Presidential Memorandum "Final Guidance on Appointments of Lobbyists to Federal Boards and Commissions," dated June 18, 2010, along with any relevant guidance published in the **Federal Register** or otherwise issued by the Office of Management and Budget (OMB).[1]

The HCFAC shall consist of not more than 12 individuals appointed by the Secretary. The membership will equally represent the mortgage industry, real estate industry, consumers, and HUD-approved housing counseling agencies. Each member shall be appointed in his or her individual capacity for a term of 3 years and may be reappointed at the discretion of the Secretary. Of the 12 members first appointed to the HCFAC in 2016, 4 were appointed for an initial term of 1 year, 4 were appointed for a term of 2 years, and 4 were appointed for a term of 3 years. The initial 12 appointments were made by the Secretary on June 1, 2016, and the one-year appointees terms will expire on May 31, 2017. This notice indicates the Secretary's decision to reappoint to new three-year terms the original appointees for consumer, mortgage, and housing counseling and to solicit applications to address a vacancy for real estate due to a withdrawal from consideration.

III. Nominations for the Housing Counseling Federal Advisory Committee

HUD is seeking nominations for an individual whose experience is representative of the real estate industry to fill one vacancy. Individuals may nominate themselves. Nominees must be U.S. citizens, and cannot be employees of the U.S. Government. All nominees will be serving in their "individual capacity" and not in a "representative capacity," therefore, no Federally-registered lobbyists may serve on the HCFAC.[2] Individual capacity, as clarified by OMB, refers to individuals who are appointed to committees to

[1] *See* 76 FR 61756 ("Final Guidance on Appointments of Lobbyists to Federal Boards and Commissions"); and 79 FR 47482 ("Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions"); *see also https://www.whitehouse.gov/the:press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions* ("Lobbyist on Agency Boards and Commissions").

[2] *See* 79 FR 47482 ("Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions") (clarifying that federally registered lobbyists may not serve on advisory committee, board, or Commission in an "individual capacity.").

exercise their own individual best judgment on behalf of the government, such as when they are designated as Special Government Employees as defined in 18 U.S.C. 202(a).

Nominations to the HCFAC must be submitted via a form available on the Office of Housing Counseling's Web site federal advisory page at: *https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/*. Each nominee will be required to include the following information:

- Name, title, and organization of the nominee and a description of how the applicant is representative of the real estate industry;
- Nominee's mailing address, email address, and telephone number;
- A statement summarizing the nominee's qualifications (including unique experiences, skills and knowledge the individual will bring to the HCFAC) and reasons why the nominee should be appointed to the HCFAC;
- A statement confirming that the nominee is not a registered federal lobbyist; and
- A statement agreeing to submit to any pre-appointment screenings HUD might require of Special Government Employees, as defined in 18 U.S.C. 202.

Nominations should be submitted via email to *HCFAC.application@hud.gov.* Individuals that do not have internet access may submit nominations to Marjorie George, Housing Program Technical Specialist, U.S. Department of Housing and Urban Development, Office of Housing Counseling, Office of Outreach and Capacity Building, 200 Jefferson Avenue, Suite 300, Memphis, TN 38103. All Nominations must be received no later than June 21, 2017.

HCFAC members will be required to adhere to the conflict of interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. 202(a). The rules include relevant provisions in Title 18 of the U.S. Code related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) and Executive Order 12674 (as modified by Executive Order 12731). Therefore, applicants will be required to submit to pre-appointment screenings relating to identity of interest and financial interests that HUD might require as shown above. If selected, HCFAC members will also be asked to complete form OGE Form 450 (Confidential Financial Disclosure Report).

Members of the HCFAC shall serve without pay but shall receive travel expenses including per diem in lieu of subsistence as authorized by 5 U.S.C. 5703. Regular attendance is essential to the effective operation of the HCFAC.

Please note this Notice is not intended to be the exclusive method by which HUD will solicit nominations and expressions of interest to identify qualified candidates; however, all candidates for membership on the HCFAC will be subject to the same evaluation criteria.

III. Selection and Meetings

After all nominations, have been reviewed, HUD will publish a notice in the **Federal Register** announcing the appointment of the HCFAC member. Member selection will be made by the Secretary and will be based on the candidate's qualifications to contribute to the accomplishment of the HCFAC's objectives. HCFAC selection will be made based on factors such as expertise and diversity of viewpoints that are necessary to effectively address the matters before the HCFAC. Membership on the HCFAC is personal to the appointee and HCFAC members serve at the discretion of the Secretary.

The estimated number of meetings anticipated within a fiscal year is two. Additional meetings may be held as needed to render advice to the Deputy Assistant Secretary for the Office of Housing Counseling. All meetings will be announced by notice in the **Federal Register**. The meetings may use electronic communication technologies for attendance.

Dated: May 31, 2017.

Genger Charles,

General Deputy Assistant, Secretary for Housing.

[FR Doc. 2017–11706 Filed 6–5–17; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1042]

Certain Hybrid Electric Vehicles and Components Thereof; Commission Decision Not To Review an Initial Determination Granting a Motion for Limited Intervention

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 6), which granted a motion for limited intervention in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 10, 2017, based on a complaint, supplemented by letters, filed by Paice LLC and Abell Foundation, Inc. both of Baltimore, Maryland (collectively, ''Paice''). 82 FR 13363 (Mar. 10, 2017). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hybrid electric vehicles and components thereof by reason of the infringement of certain claims of five United States patents. The notice of investigation named as the respondent Ford Motor Company of Dearborn, Michigan (''Ford''). The Office of Unfair Import Investigations was not named as a party.

On April 7, 2017, Paice filed a motion with the ALJ for a recommendation to the United States District Court for the District of Columbia to issue an order/commission pursuant to Article 17 of the United States-Japan Consular Convention to obtain discovery from the Toyota Motor Corporation of Aichi Prefecture, Japan (''Toyota''). On April 11, 2017, Ford opposed the motion. That same day, non-party Toyota moved to intervene in this investigation for the purpose of submitting a concurrently filed opposition to the motion. *See* 19 CFR 210.19. On May 2, 2017, the presiding ALJ granted Toyota's motion as the subject ID. Order No. 6 (May 2, 2017).

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 31, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–11614 Filed 6–5–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Fourth Review)]

Cased Pencils From China; Cancellation of Hearing for Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: Effective May 31, 2017.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202) 205–2610, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective February 27, 2017, the Commission established a schedule for the conduct of this review (82 FR 12467, March 3, 2017). Subsequently, counsel for the domestic interested parties filed a request for consideration of cancellation of the hearing. Counsel indicated a willingness to submit written testimony and responses to any Commission questions in lieu of an actual hearing. No other party has entered an appearance in this review. Consequently, the public hearing in connection with this review, scheduled to begin at 9:30 a.m. on Thursday, June 15, 2017, at the U.S. International Trade Commission Building, is cancelled. Parties to this review should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on June 26, 2017.

For further information concerning this review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 31, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–11615 Filed 6–5–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Submission for Review: Electronic Submission Form for Requests for Corrective Action, Whistleblower Protection for Federal Bureau of Investigation Employees

AGENCY: Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting this information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is a Request for Corrective Action Form, available on OARM's public Web site, for current and former employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) who wish to file a claim of whistleblower reprisal.

DATES: Comments are encouraged and will be accepted for 60 days until August 7, 2017.

SUPPLEMENTARY INFORMATION: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Justice, Office of Attorney Recruitment and Management, 450 5th Street NW., Suite 10200, Attn: Hilary S. Delaney, Washington, DC 20530. Your comments 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;

(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:* Existing.

(2) *Title of Form/Collection:* Request for Corrective Action Form.

(3) *The agency form number, if any/the applicable component of the department sponsoring the collection:* No form number/Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:* Individuals. The application form is submitted voluntarily by individuals who are current or former employees of, or applicants for employment with, the FBI who allege reprisal for their whistleblowing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated to respond/reply:* An average of 10 respondents per year, and an average of three hours to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* About 30 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: June 1, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–11654 Filed 6–5–17; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0319]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: National Survey of Youth in Custody, 2017–2018

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 7, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jessica Stroop, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *jessica.stroop@usdoj.gov;* telephone: 202–598–7610).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New data collection.

2. *The Title of the Form/Collection:* National Survey of Youth in Custody, 2017–2018.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available at this time. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop and implement surveys to produce estimates for the incidence and prevalence of sexual assault within juvenile correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79). Juvenile facility points of contact will be asked to fill out an online survey gathering facility-level characteristics. Sampled youth in custody will be asked to complete an audio computer-assisted self-interview about their experiences inside the facility.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 354 facility points of contact will spend approximately one hour filling out the facility characteristics questionnaire. It is estimated that 8,690 youth respondents will spend approximately 7 minutes going through the assent process and 35 minutes on average responding to the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,533 total burden hours associated with this collection (including gathering facility-level information, obtaining parental consent, administrative records, and roster processing).

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: June 1, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–11655 Filed 6–5–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 30, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Texas, Abilene Division, in the lawsuit entitled *United States* v. *Alon USA, LP,* Case No.1:17–cv–00087.

The proposed Consent Decree resolves United States' claims under the Clean Air Act (CAA) against Alon USA, LP, concerning its petroleum refinery located in Big Spring, Texas. The proposed Decree addresses the pollutants benzene (under the National Emission Standards for Hazardous Air Pollutants for benzene) and volatile organic compounds (in connection with leak-detection-and-repair requirements). Under the CAA's New Source Performance Standards and the Prevention of Significant Deterioration standards, the proposed Decree also addresses various emissions from certain refinery devices, including: Heaters and boilers, flares, and a fluidized catalytic cracking unit (including its regenerator and its associated boiler). Also under the proposed Decree, Defendant would perform a supplemental environmental project to reduce emissions of nitrogen oxides and pay a civil penalty of $456,250.00.

The publication of this notice opens a period for public comment on the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Alon USA, LP,* D.J. Ref. No. 90–5–2–1–09157. All comments must be received no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $40.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–11616 Filed 6–5–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respirator Programs Records

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Respirator Program Records,'' 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 July 6, 2017.

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* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201612-1219-002* (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–MSHA, 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*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Respirator Program Records information collection requirements contained in regulations 30 CFR 56.5005 and 57–5005, which provide that, generally, whenever respiratory equipment is used, the metal or nonmetal mine operator must institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning, and use of respirators. These regulations seek to control miner exposure to harmful airborne contaminants by using engineering controls to prevent contamination and to vent or to dilute any contaminated air. The regulations include information collections related to the development of a respirator program that addresses the selection, use, and care of respirators; fit-testing records used to ensure that a respirator worn by an individual is the same brand, model, and size respirator that was worn when that individual successfully passed a fit-test; and records kept of inspection dates and findings for respirators maintained for emergency use. The mine operator uses the information to issue proper respiratory protection to miners when feasible engineering and/or administrative controls do not reduce miners' exposures to permissible levels. The MSHA uses the information to determine compliance with the standard. Mine Safety and Health Act of 1977 section 103(h) authorizes this information collection. *See* 30 U.S.C. 813(h).

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 1219–0048.

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 July 31, 2017. 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 March 7, 2017 (43 FR 12855).

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 1219–0048. 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–MSHA.

Title of Collection: Respirator Program Records.

OMB Control Number: 1219–0048.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 300.

Total Estimated Number of Responses: 5,400.

Total Estimated Annual Time Burden: 3,075 hours.

Total Estimated Annual Other Costs Burden: $90,000.

Dated: May 31, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–11657 Filed 6–5–17; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0007]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of a teleconference meeting of ACCSH.

SUMMARY: ACCSH will hold a teleconference meeting June 20, 2017, to consider a proposed rule to extend the enforcement date for OSHA's crane operator certification requirement in the Cranes and Derricks in Construction standard for an additional year until November 10, 2018. OSHA also proposes to extend the existing employer duty to ensure that crane operators are trained and competent to operate equipment safely for the same period of time.

DATES: ACCSH will meet from 1 to 5 p.m., ET, Tuesday, June 20, 2017.

Submit (postmark, send, transmit) comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for the ACCSH meeting by June 9, 2017.

ADDRESSES: *Submission of comments, requests to speak, and speaker presentations for the ACCSH meeting:* Submit comments, requests to speak, and speaker presentations for the ACCSH meeting, using one of the following methods:

Electronically: Submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If the submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger (courier) service: Submit materials to the OSHA Docket Office, Docket No. OSHA–2017–0007, Room N–3508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger service) during normal business hours, 10:00 a.m.–3:00 p.m., ET, weekdays.

Instructions: Submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2017–0007). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change, at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

Location of the ACCSH meeting: This ACCSH meeting will be by teleconference only.

Requests for special accommodations: Attendance at this ACCSH meeting will be by teleconference only. Please submit requests for telecommunication requirements or for special accommodations for this ACCSH meeting to Ms. Veneta Chatmon, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; email: *chatmon.veneta@dol.gov.*

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about this ACCSH meeting: Mr. Damon Bonneau, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; email: *bonneau.damon@dol.gov.*

Copies of this ***Federal Register*** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

Background: ACCSH will meet June 20, 2017, by teleconference. The meeting is open to the public. OSHA transcribes ACCSH meetings and prepares detailed minutes of meetings. OSHA places the transcript and minutes in the public docket for the meeting. The docket also includes speaker presentations, comments, and other materials submitted to ACCSH.

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (*see* also 29 CFR 1911.10 and 1912.3). In addition, the OSH Act and CSA require that the Assistant Secretary consult with ACCSH before the Agency proposes any occupational safety and health standard affecting construction activities (29 CFR 1911.10; 40 U.S.C. 3704).

Meeting agenda: The tentative agenda for this meeting includes:

- Presentation on OSHA's proposed rule to extend the enforcement date for the crane operator certification requirements and the existing employer duty in the Cranes and Derricks in Construction standards (29 CFR part 1926, subpart CC);
- ACCSH's consideration of, and recommendation on, OSHA's Proposed Rule to extend the enforcement date for the crane operator certification requirements and the existing employer duty in the Cranes and Derricks in Construction standards (29 CFR part 1926, subpart CC); and,
- Public Comment Period.

Attending the meeting: Attendance at this ACCSH meeting will be by teleconference only. The dial-in number

and passcode for the meeting are as follows: Dial-in number: 1–888–604–9368; Passcode: 8521818. For additional information about attending ACCSH meetings, please contact Ms. Chatmon (see ''*Requests for special accommodations*'' in the **ADDRESSES** section of this notice).

Requests to speak and speaker presentations: Attendees who want to address ACCSH during the meeting must submit a request to speak, as well as any written or electronic presentation, by June 9, 2017, using one of the methods listed in the **ADDRESSES** section. The request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, you may request to address ACCSH briefly during the public comment period.

The ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

Public docket of the ACCSH meeting: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change, and those documents may be available online at: *http://www.regulations.gov.* OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the ACCSH meeting, and other documents pertaining to the ACCSH meeting. These documents are available online at: *http://www.regulations.gov.*

Access to the public record of the ACCSH meeting: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2017–0007 at: *http://www.regulations.gov.* The *http://www.regulations.gov* index also lists all documents in the public record for this meeting; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection in the OSHA Docket Office (see **ADDRESSES** section). Contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Authority and Signature

Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 40 U.S.C. 3704; 5 U.S.C. App. 2; 29 CFR parts 1911 and 1912; 41 CFR 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on May 31, 2017.

Dorothy Dougherty,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–11588 Filed 6–5–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[17–032]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Security Presidential Directive (NSPD–39) dated December 8, 2004, and Executive Order 13708 dated September 20, 2015, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Wednesday, June 28, 2017, 10:00 a.m. to 6:00 p.m.; and Thursday, June 29, 2017, 9:00 a.m. to 1:00 p.m., Local Time.

ADDRESSES: Baltimore Marriott Inner Harbor, 110 South Eutaw Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Designated Federal Officer, and Deputy Director of Policy and Strategic Communications, Space Communications and Navigation, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–4297, or *jj.miller@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

The agenda for the meeting includes the following topics:

- Update on PNT Policy and Global Positioning System (GPS) Modernization.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture alternatives with a focus on affordability.
- Examine methods in which to Protect, Toughen, and Augment (PTA) access to GPS/Global Navigation Satellite System (GNSS) services in key domains for multiple user sectors.
- Assess economic impacts of GPS on the United States and in select international regions, with a consideration towards effects of potential PNT service disruptions if radio spectrum interference is introduced.
- Review the potential benefits, perceived vulnerabilities, and any proposed regulatory constraints to accessing foreign Radio Navigation Satellite Service (RNSS) signals in the United States and subsequent impacts on multi-GNSS receiver markets.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international GNSS.
- Examine emerging trends and requirements for PNT services in U.S. and international fora through PNT Board technical assessments, including back-up services for terrestrial, maritime, aviation, and space users.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–11685 Filed 6–5–17; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–046]

Advisory Committee on the Records of Congress

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, we are announcing a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in NARA's Office of Legislative Archives, Presidential Libraries, and Museum Services (LL). This meeting will take place at the Capitol Visitor Center.

DATES: The meeting will be on June 26, 2017, from 10:00 a.m. to 11:30 a.m. EDT.

ADDRESSES: Capitol Visitor Center, Congressional Meeting Room North.

FOR FURTHER INFORMATION CONTACT: Sharon Shaver by email at *sharon.shaver@nara.gov* or the Center for Legislative Archives by phone at 202–357–5350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Agenda

(1) Chair's Opening Remarks—Clerk of the U.S. House of Representatives
(2) Recognition of co-chair—Secretary of the U.S. Senate
(3) Recognition of the Archivist of the United States
(4) Approval of the minutes of the last meeting
(5) House Archivist's report
(6) Senate Archivist's report
(7) Center for Legislative Archives update
(8) Other current issues and new business

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2017–11601 Filed 6–5–17; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0119]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of one amendment request. The amendment request is for Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4. The proposed amendment would revise the combined licenses (COL) Appendix C (and to plant-specific Tier 1 information) and associated Tier 2 information to address mitigation of fire protection system flooding of the Auxiliary Building identified during completion of the pipe rupture hazards analysis. An exemption request relating to the proposed changes to the AP1000 Design Control Document Tier 1 is included with the request. The NRC proposes to determine that the license amendment request involves no significant hazards consideration. Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by July 6, 2017. A request for a hearing must be filed by August 7, 2017. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by June 16, 2017.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0119. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0119, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0119.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0119, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued, and grants the Commission the

authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of an amendment containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 7, 2017. The petition must be filed in accordance with the filing instructions in the

''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would

constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: March 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17090A570.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment request proposes changes to the combined licenses (COL) Appendix C (and to plant-specific Tier 1 information) and associated Tier 2 information to address mitigation of fire protection system flooding of the Auxiliary Building identified during completion of the pipe rupture hazards analysis. An exemption request relating to the proposed changes to the AP1000 Design Control Document Tier 1 is included with the request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the design and licensing basis flood level in the Auxiliary Building [radiologically controlled area (RCA)], and the associated plant changes to limit the volume of water available for flooding or to limit the effects of flooding do not affect any essential safety-related equipment or function. The changes and affected levels of the Auxiliary Building RCA do not involve any accident, initiating event or component failure; thus, the probabilities of the accidents previously evaluated are not affected. The maximum allowable leakage rate specified in the Technical Specifications is unchanged, and radiological material release source terms are not affected; thus, the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the design and licensing basis flood level in the Auxiliary Building RCA and the associated plant changes to limit the volume of water available for flooding or to limit the effects of flooding do not affect any safety-related equipment or function. The changes do not change the condition of any essential safety-related equipment or structure; therefore, no new accident initiator or failure mode is created. The proposed changes do not create a new fault or sequence of events that could result in a radioactive release. The proposed changes will not affect any safety-related mitigating function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the design and licensing basis flood level in the Auxiliary Building RCA and associated plant changes to limit the volume of water available for flooding or to limit the effects of flooding do not affect any essential safety-related equipment or function. The proposed changes do not have any effect on the ability of safety-related structures, systems, or components to perform their design basis functions. The changes ensure that the capability to achieve safe shutdown is maintained. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 25th day of May, 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2017–11211 Filed 6–5–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0131]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from May 9, 2017, to May 22, 2017. The last biweekly notice was published on May 23, 2017.

DATES: Comments must be filed by July 6, 2017. A request for a hearing must be filed by August 7, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0131. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411; email: *shirley.rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0131, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0131.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0131, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 7, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State,

local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document,

see the ''Obtaining Information and Submitting Comments'' section of this document.

Energy Northwest, Docket No. 50–397, Columbia Generating Station (Columbia), Benton County, Washington

Date of amendment request: March 27, 2017. A publicly-available version is in ADAMS under Accession No. ML17086A586.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) for Columbia and proposes changes to the containment leakage rate testing programs of Type A, B and C. These tests are required by TS 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' and these changes would adopt the more conservative allowable test internal extension of Nuclear Energy Institute (NEI) 94–01, Revision 3–A and also adopt American National Standards Institute/American Nuclear Society 56.8–2002, ''Containment System Leakage Testing Requirements.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed activities involve the revision of Columbia Generating Station (Columbia) Technical Specification (TS) 5.5.12 to allow the extension of the Type A containment test interval to 15 years, and the extension of the Type C test interval to 75 months. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions.

The proposed extensions do not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident.

The change in Type A test frequency to once-per-fifteen-years, measured as an increase to the total integrated plant risk for those accident sequences influenced by Type A testing, is 2.77E–4 person-rem [roentgen equivalent man]/yr (a 0.00761% increase). EPRI [Electric Power Research Institute] Report No. 1009, Revision 2–A states that a very small population dose is defined as an increase of less than 1.0 person-rem per year or less than 1 percent of the total population dose, whichever is less restrictive for the risk impact assessment of the extended ILRT [integrated leakage rate test] intervals. Moreover, the risk impact when compared to other severe accident risks is negligible. Therefore, the proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

In addition, as documented in NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' dated January 1995, Types B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The Columbia Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as: (1) Activity based, and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with ASME [American Society of Mechanical Engineers] Section XI, and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test. Based on the above, the proposed test interval extensions do not significantly increase the consequences of an accident previously evaluated.

The proposed amendment also deletes two exceptions previously granted. The first exception allowed a one-time extension of the ILRT test frequency for Columbia. This exception was for an activity that has already taken place; therefore, this deletion is solely an administrative action that does not result in any change in how Columbia is operated. The second exemption to compensate for flow metering inaccuracies in excess of those specified in the American National Standards Institute (ANSI)/American Nuclear Society (ANS) ANSI/ANS 56.8–1994 will be deleted as new test equipment has been acquired with accuracies within the tolerances specified in ANSI/ANS 56.8–1994 and 2002.

Therefore, the proposed changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' involves the extension of the Columbia Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident.

The proposed change does not involve a physical modification to the plant (*i.e.,* no new or different type of equipment will be installed) nor does it alter the design, configuration, or change the manner in which the plant is operated or controlled beyond the standard functional capabilities of the equipment.

The proposed amendment also deletes two exceptions previously granted. The first exception granted under TS Amendment No. 191 allowed a one-time extension of the ILRT test frequency for Columbia. This exception was for an activity that has already occurred; therefore, this deletion is solely an administrative action that does not result in any change in how Columbia is operated. The second exemption which was originally granted via Amendment No. 144 to compensate for flow meter inaccuracies in excess of those specified in ANSI/ANS 56.8–1994, will be deleted as new test equipment has been acquired with accuracies within the tolerances specified in ANSI/ANS 56.8–1994 and 2002. These changes to the exceptions in TS 5.5.12 are administrative in nature and do not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed amendment to TS 5.5.12 involves the extension of the Columbia Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves the extension of the interval between Type A containment leak rate tests and Type C tests for Columbia. The proposed surveillance interval extension is bounded by the 15-year ILRT interval and the 75-month Type C test interval currently authorized within NEI 94–01, Revision 3–A. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small.

The containment inspections performed in accordance with ASME Section Xl, and TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A and Type C test intervals. The proposed amendment also deletes exceptions previously granted to allow one time extension of the ILRT test frequency for Columbia. This exception was for an activity that has taken place; therefore, the deletion is solely an administrative action and does not change how Columbia is operated and maintained. Thus, there is no reduction in any margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: March 27, 2017. A publicly-available version is in ADAMS under Accession No. ML17086A587.

Description of amendment request: The proposed amendment would revise or add surveillance requirements (SRs) to verify that the system locations susceptible to gas accumulation are sufficiently filled with water and to provide allowances, which permit performance of the verification. The changes are being made to address the concerns discussed in Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems.'' The proposed amendment is consistent with Technical Specification Task Force (TSTF) TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the Emergency Core Cooling System (ECCS), Reactor Core Isolation Cooling (RCIC) System, Residual Heat Removal (RHR) Shutdown Cooling System, RHR Drywell Spray System, and RHR Suppression Pool Cooling System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. Gas accumulation in the subject systems is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The proposed SRs ensure that the subject systems continue to be capable to perform their assumed safety function and are not rendered inoperable due to gas accumulation. Thus, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, RCIC System, RHR Shutdown Cooling System, RHR Drywell Spray System, and RHR Suppression Pool Cooling System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the proposed change does not impose any new or different requirements that could initiate an accident. The proposed change does not alter assumptions made in the safety analysis and is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, RCIC System, RHR Shutdown Cooling System, RHR Drywell Spray System, and RHR Suppression Pool Cooling System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change adds new requirements to manage gas accumulation in order to ensure the subject systems are capable of performing their assumed safety functions. The proposed SRs are more comprehensive than the current SRs and will ensure that the assumptions of the safety analysis are protected. The proposed change does not adversely affect any current plant safety margins or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: March 31, 2017. A publicly-available version is in ADAMS under Package Accession No. ML17102B194.

Description of amendment request: The proposed amendment by NextEra Energy Duane Arnold, LLC (NextEra Duane Arnold) would modify the DAEC Emergency Plan (E Plan) that revises the Emergency Planning Zone (EPZ) boundary for an area beyond the 10 mile required EPZ, specifically, subarea 24 of the EPZ by designating U.S. Highway 30 as its southern boundary. Currently, there is a tract within the DAEC EPZ subarea 24 that is to the south of US Highway 30. This tract in subarea 24 is unique—otherwise, the entire DAEC EPZ is to the north of US Highway 30, which is a four lane, divided highway. Subarea 24 is within Linn County, Iowa. The EPZ boundary change requires that a new Evacuation Time Estimates (ETE) study be performed for the DAEC host counties of Linn and Benton, Iowa, and this revision is also included in the proposal. The proposed change to the southern boundary of the EPZ is considered a reduction in effectiveness as defined in 10 CFR 50, Paragraph 50.54(q)(1)(iv) due to the reduction in EPZ area beyond the 10 mile boundary, and as such, it requires prior NRC approval in accordance with the requirements of 10 CFR 50.54(q)(4). The

proposed change to the subarea 24 boundary will enhance law enforcement's ability to evacuate subareas in the Cedar Rapids area as well as improve their ability to control the access back into evacuated metro areas. Further, the proposed change to subarea 24 will make the overall DAEC EPZ boundary more consistent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This amendment request would alter portions of the southern, outer EPZ boundary defined in the DAEC E Plan to align with the EPZ boundaries requested by the Linn County Emergency Management Commission. The proposed amendment does not involve any modifications or physical changes to plant systems, structures, or components. The proposed amendment does not change plant operations or maintenance of plant systems, structures, or components, nor does the proposed amendment alter any DAEC E Plan facility or equipment. Changing the EPZ boundaries cannot increase the probability of an accident since emergency plan functions would be implemented after a postulated accident occurs. The proposed amendment does not alter or prevent the ability of the DAEC emergency response organization to perform intended emergency plan functions to mitigate the consequences of, and to respond adequately to, radiological emergencies.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request alters the EPZ boundary described in the DAEC E Plan. The proposed amendment does not involve any design modifications or physical changes to the plant, does not change plant operation or maintenance of equipment, and does not alter DAEC E Plan facilities or equipment. The proposed amendment to the DAEC E Plan does not alter any DAEC emergency actions that would be implemented in response to postulated accident events.

The proposed amendment does not create any credible new failure mechanisms, malfunctions, or accident initiators not previously considered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment request would alter one subarea in the EPZ boundary defined in the DAEC E Plan. The proposed amendment does not involve any design or licensing bases functions of the plant, no physical changes to the plant are to be made, it does not impact plant operation or maintenance of equipment, and it does not alter DAEC E Plan facilities or equipment. This change does not alter any DAEC emergency actions that would be implemented in response to postulated accident events. The DAEC E Plan continues to meet 10 CFR 50.47 and 10 CFR 50, Appendix E requirements for emergency response.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, P. O. Box 14000 Juno Beach, FL 33408–0420.

NRC Branch Chief: David J. Wrona.

Northern States Power Company—Minnesota (NSPM), Docket Nos. 50–263, 50–282 and 50–306, Monticello Nuclear Generating Plant (MNGP), Wright County, and Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP), Goodhue County, Minnesota

Date of amendment request: March 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17090A201.

Description of amendment request: The proposed amendment would revise the PINGP technical specification (TS) 5.3, ''Plant Staff Qualifications'' and MNGP TS 5.3, ''Unit Staff Qualifications,'' subsections 5.3.1 to add an exception for licensed operators from the education and experience eligibility requirements of American National Standards Institute (ANSI) N18.1–1971, ''Selection and Training of Nuclear Power Plant Personnel,'' by requiring that licensed operators comply only with the requirements of 10 CFR part 55, ''Operators' Licenses.'' Additionally, the proposed change would revise the PINGP and MNGP TS 5.0, ''Administrative Controls,'' sub-sections 5.1–5.3 by making changes to standardize and align formatting to the extent possible between the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS 5.3.1 to take exception to ANSI N18.1–1971 requirements for the education and experience qualifications requirements for licensed operators and requires compliance with 10 CFR 55 and standardizes language between the TS without modifying meaning. An allowance for utilization of a Commission-approved training program that is based upon a SAT [site access training] is contained within 10 CFR 55. The NRC has also stated that the NANT [National Academy for Nuclear Training] guidelines, as endorsed, for initial licensed operator training and qualification are an acceptable way to meet the requirements of 10 CFR 55.

The proposed changes are administrative and do not affect any system that is a contributor to initiating events for previously evaluated accidents. Nor do the changes affect any system that is used to mitigate any previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change revises TS 5.3.1 to take exception to ANSI N18.1–1971 requirements for the education and experience qualifications requirements for licensed operators and requires compliance with 10 CFR 55 and standardizes language between the TS without modifying the meaning. An allowance for utilization of a Commission-approved training program that is based upon a SAT is contained within 10 CFR 55. The NRC has also stated that the NANT guidelines, as endorsed, for initial licensed operator training and qualification are an acceptable way to meet the requirements of 10 CFR 55. The proposed change is administrative and does not alter the design, function, or operation of any plant component, nor do they involve installation of any new or different equipment.

Therefore, the proposed change does not create the possibility of a new or difference [different] kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises TS 5.3.1 to take exception to ANSI N18.1–1971 requirements for the education and experience qualifications requirements for licensed operators and requires compliance with 10 CFR 55 and standardizes language between the TS without modifying the meaning. An allowance for utilization of a Commission-approved training program that is based upon a SAT is contained within 10 CFR 55. The NRC has also stated that the NANT guidelines, as endorsed, for initial licensed operator training and qualification are an acceptable way to meet the

requirements of 10 CFR 55. The proposed change is administrative and does not alter the design, function, or operation of any plant component, nor do they involve installation of any new or different equipment.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David J. Wrona.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: March 31, 2017. A publicly-available version is in ADAMS under Accession Package No. ML17095A107.

Description of amendment request: The proposed amendment would revise the current emergency action levels (EAL) scheme used at MNGP to the EAL scheme contained in NEI 99–01, Revision 6, ''Development of Emergency Action Levels.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the MNGP EAL scheme does not impact the physical function of plant structures, systems or components (SSC) or the manner in which the SSCs perform their design function. The proposed change neither adversely affects accident initiators or precursors, nor alters design assumptions. Therefore, the proposed change does not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an event. The Emergency Plan, including the associated EALs, is implemented when an event occurs and cannot increase the probability of an accident. Further, the proposed change does not reduce the effectiveness of the Emergency Plan to meet the emergency planning requirements established in 10 CFR 50.47 and 10 CFR 50, Appendix E.

Therefore, the proposed EAL scheme change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration to the plant, that is, no new or different type of equipment will be installed. The proposed change also does not change the method of plant operation and does not alter assumptions made in the safety analysis. Therefore, the proposed change will not create new failure modes or mechanisms that could result in a new or different kind of accident. The Emergency Plan, including the associated EAL scheme, is implemented when an event occurs and is not an accident initiator.

Therefore, the proposed EAL scheme change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is provided by the ability of accident mitigation SSCs to perform at their analyzed capability. The change proposed in this license amendment request does not modify any plant equipment and there is no impact to the capability of the equipment to perform its intended accident mitigation function. The proposed change does not impact operation of the plant or its response to transients or accidents. Additionally, the proposed changes will not change any criteria used to establish safety limits or any safety system settings. The applicable requirements of 10 CFR 50.47 and 10 CFR 50, Appendix E will continue to be met.

Therefore, the proposed EAL scheme change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David J. Wrona.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: March 24, 2017. A publicly-available version is available in ADAMS under Accession No. ML17094A810.

Description of amendment request: The amendment would revise the renewed facility operating license Paragraph 3.C, ''Security and Safeguards Contingency Plans.'' The amendment would revise the FCS Cyber Security Plan (CSP) implementation schedule for Milestone 8 (MS8) full implementation date from December 31, 2017, to December 28, 2018.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment request proposes a change to the FCS CSP MS8 completion date as set forth in the CSP implementation schedule and associated regulatory commitments. The NRC staff has concluded that the proposed change: (1) Does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected; (2) does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents; and (3) has no impact on the probability or consequences of an accident previously evaluated. In addition, the NRC staff has concluded that the proposed change to the CSP implementation schedule is administrative in nature.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The NRC staff has concluded the proposed change: (1) Does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected; and (2) does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of

postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated. In addition, the NRC staff has concluded that the proposed change to the FCS CSP MS8 implementation schedule is administrative in nature.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The delay of the full implementation date for the FCS CSP MS8 has no substantive impact because other measures have been taken which provide adequate protection for the plant during this period of time. Therefore, the NRC staff has concluded that there is no significant reduction in a margin of safety. In addition, the NRC staff has concluded that the proposed change to the FCS CSP MS8 implementation schedule is administrative in nature.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Douglas A. Broaddus.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: March 31, 2017. A publicly-available version is available in ADAMS under Accession No. ML17093A309.

Description of amendment request: The amendment would revise the FCS license conditions, definitions, and Technical Specifications (TS) sections to align with those required for the Permanently Defueled Technical Specifications (PDTS) that will reflect decommissioning requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Because the 10 CFR part 50 license for FCS will no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel with the certifications required by 10 CFR part 50.82(a)(1) submitted, as specified in 10 CFR part 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The only remaining credible accident is a [fuel handling accident (FHA)]. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact the FHA.

The only remaining [Update Safety Analysis Report (USAR)] Chapter 14 postulated accident scenario that could potentially occur at a permanently defueled facility would be a[n] FHA. Remaining Chapter 14 events include an accidental release of waste liquid and heavy load drop. Since the waste gas decay tanks have been purged of their content, and the volume control tanks, liquid holdup tanks, reactor coolant drain tank, and associated systems, contain waste that does not exceed any of the 10 CFR 50.67 limits if an event were to occur. The analyzed accident that remains applicable to FCS in the permanently shutdown and defueled condition is a[n] FHA in the auxiliary building where the SFP is located. The FHA analyses for FCS shows that, following 100 days of decay time after reactor shutdown and provided the [spent fuel pool (SFP)] water level requirements of TS 2.8.3(2) are met, the dose consequences are acceptable without relying on [structures, systems, and components (SSCs)] remaining functional for accident mitigation during and following the event. The one exception to this is the continued function of the passive SFP structure.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition and safe storage and handling of fuel will be the only operations performed, and therefore bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation will no longer be credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The removal of TS that are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor-related transients or accidents, cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor is permanently shutdown and defueled and FCS is no longer authorized to operate the reactor.

The proposed modification or deletion of requirements in the FCS 10 CFR part 50 License and TS do not affect systems credited in the accident analysis for the FHA at FCS.

The proposed license and TS will continue to require proper control and monitoring of systems associated with significant parameters and activities. The TSs continue to preserve the requirements for safe storage and movement of irradiated fuel.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining credited barriers for defueled plants (fuel cladding, spent fuel racks, SFP integrity, and SFP water level). Since extended operation in a defueled condition and safe fuel handling will be the only operations performed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR part 50 license for FCS no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel with the certifications required by 10 CFR part 50.82(a)(1) submitted, as specified in 10 CFR part 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The only remaining credible postulated accident is a[n] FHA. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact the FHA.

The proposed changes are limited to those portions of the license and TS that are not related to the safe storage or movement of irradiated fuel. The requirements that are proposed to be revised or deleted from the FCS license and TS are not credited in the existing accident analysis for the remaining applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated [design-basis accidents (DBAs)] involving the reactor will no longer be possible because the reactor will be permanently shutdown and defueled and FCS will no longer be authorized to operate the reactor.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Douglas A. Broaddus.

PSEG Nuclear, LLC, and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 6, 2017, as supplemented by letter dated May 4, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17065A241 and ML17125A051, respectively.

Description of amendment request: The amendments would revise Technical Specification (TS) 3.6.2.3, ''Containment Cooling System,'' to extend the containment fan coil unit allowed outage time (AOT) from 7 days to 14 days for one or two inoperable containment fan coil units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The containment fan cooling units (CFCUs) are safety related components which provide the minimum containment cooling as assumed by the containment response analysis for a design-basis loss of coolant accident (LOCA) or main steam line break (MSLB) event. The CFCUs are not accident initiators; the CFCUs are designed to mitigate the consequences of previously evaluated accidents including a design basis LOCA or MSLB event. Extending the AOT for one or two inoperable CFCUs would not affect the previously evaluated accidents since the remaining three CFCUs supplying cooling to containment would continue to be available to perform the accident mitigation functions. Thus allowing one or two CFCUs to be inoperable for an additional 7 days for performance of maintenance or testing does not increase the probability of a previously evaluated accident.

Deterministic and probabilistic risk assessments evaluated the effect of the proposed Technical Specification change on the acceptability of operating with one or two CFCUs inoperable for up to 14 days. These assessments concluded that the proposed Technical Specification change does not involve a significant increase in the risk from CFCU unavailability.

The calculated impact on risk associated with continued operation for an additional 7 days with one or two CFCUs inoperable is very small and is consistent with the acceptance guidelines contained in Regulatory Guides 1.174 and 1.177. This risk is judged to be reasonably consistent with the risk associated with operations for 7 days with one or two CFCUs inoperable as allowed by the current Technical Specifications. The remaining 3 operable CFCUs, in conjunction with the Containment Spray System, are adequate to supply cooling to remove sufficient heat from the reactor containment, following the initial LOCA/MSLB containment pressure transient, to keep the containment pressure from exceeding the design pressure.

The consequences of previously evaluated accidents will remain the same during the proposed 14 day AOT as during the current 7 day AOT. The ability of the remaining 3 TS required CFCUs to maintain containment pressure and temperature within limits following a postulated design basis LOCA or MSLB event will not be affected.

There will be no impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions will be changed and there will be no adverse effects on onsite or offsite doses as the result of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification change does not involve a change in the plant design, system operation, or procedures involved with the CFCUs. The proposed changes allow one or two CFCUs to be inoperable for additional time. There are no new failure modes or mechanisms created due to plant operation for an extended period to perform CFCU maintenance or testing. Extended operation with one or two inoperable CFCUs does not involve any modification in the operational limits or physical design of plant systems. There are no new accident precursors generated due to the extended AOT.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed change, which would increase the AOT from 7 days to 14 days for one or two inoperable CFCUs, does not exceed or alter a setpoint, design basis or safety limit.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: James G. Danna.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield, South Carolina

Date of amendment request: May 2, 2017. A publicly-available version is in ADAMS under Accession No. ML17122A353.

Description of amendment request: The amendment request proposes changes to the Protection and Safety Monitoring System (PMS) including the reactor trip system (RTS) and the engineered safety feature actuation system (ESFAS), the passive core cooling system (PXS), the steam generator blowdown system (BDS), and the spent fuel pool cooling system (SFS). In addition, revisions are proposed to COL Appendix A, Technical Specifications. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to add IRWST lower narrow range level instruments addresses the accuracy required to initiate IRWST containment recirculation following a design basis accident in order to mitigate the consequences of the accident. The proposed change to add the new defense-in-depth refueling cavity and SFS isolation on Low IRWST wide range level addresses a seismic or other event resulting in a pipe rupture in the nonsafety-related, nonseismic SFS when connected to the IRWST that could potentially result in a loss of IRWST inventory. Isolation of the SFS from the IRWST to mitigate the consequences of a design basis accident continues to be implemented by the existing containment isolation function, and does not rely on the new defense-in-depth refueling cavity and SFS isolation on Low IRWST wide range level. The addition of RTS and ESFAS P–9 interlocks and blocks does not affect the availability of the actuated equipment to perform their design functions to mitigate the consequences of an accident. The proposed

changes do not involve any accident initiating component/system failure or event, thus the probabilities of the accidents previously evaluated are not affected.

The affected equipment does not adversely affect or interact with safety-related equipment or a radioactive material barrier, and this activity does not involve the containment of radioactive material. Thus, the proposed changes would not adversely affect any safety-related accident mitigating function. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological release in the UFSAR accident analyses are not affected.

These proposed changes to the PMS design do not have an adverse effect on any of the design functions of the affected actuated systems. The proposed changes do not affect the support, design, or operation of mechanical and fluid Systems required to mitigate the consequences of an accident. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the proposed changes create any new accident precursors.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to add IRWST lower narrow range level instruments include requirements similar in function and qualification to many safety-related instruments already performing the affected safety functions as described in the current licensing basis to enable the RTS and ESFAS to perform required design functions, and are consistent with other Updated Final Safety Analysis Report (UFSAR) information. The proposed change to add the new defense-in-depth refueling cavity and SFS isolation on Low IRWST wide range level addresses a seismic or other event resulting in a postulated pipe rupture in the nonsafety-related, nonseismic SFS when connected to the IRWST that could potentially result in a loss of IRWST inventory. Isolation of the SFS from the IRWST to mitigate the consequences of a design basis accident continues to be implemented by the existing containment isolation function, and does not rely on the new defense-in-depth refueling cavity and SFS isolation on Low IRWST wide range level. The addition of RTS and ESFAS P–9 interlocks and blocks does not affect the availability of the actuated equipment to perform their design functions to mitigate the consequences of an accident. This activity does not allow for a new radioactive material release path, result in a new radioactive material barrier failure mode, or create a new sequence of events that would result in significant fuel cladding failures.

The proposed changes revise the PMS design. The proposed changes do not adversely affect the design requirements for the PMS, or the design requirements of associated actuated systems. The proposed changes do not adversely affect the design function, support, design, or operation of mechanical and fluid systems. The proposed changes to the PMS do not result in a new failure mechanism or introduce any new accident precursors. No design function described in the UFSAR is adversely affected by the proposed changes.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit or acceptance criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced. The proposed change to add the new defense-in-depth refueling cavity and SFS isolation of Low IRWST wide range level addresses a seismic or other event resulting in a postulated pipe rupture in the nonsafety-related, nonseismic SFS when connected to the IRWST, maintaining the required IRWST inventory and preserving the original margin of safety assumed for the PXS and SFS.

Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC, 1111 Pennsylvania NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: May 10, 2017. A publicly-available version is in ADAMS under Accession No. ML17130A999.

Description of amendment request: The VEGP amendment request proposes changes which involve departures from incorporated plant-specific Tier 2 and Tier 2* Updated Final Safety Analysis Report (UFSAR) information in order to make changes to the design of certain components of the auxiliary building roof reinforcement and roof girders, and other related changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the auxiliary building roof are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the auxiliary building. The auxiliary building is a seismic Category I structure and is designed for dead, live, thermal, pressure, safe shutdown earthquake loads, and loads due to postulated pipe breaks. The auxiliary building roof is designed for snow, wind, and tornado loads and postulated external missiles. The proposed changes to UFSAR descriptions and figures are intended to address changes in the detail design of the auxiliary building roof. The thickness and strength of the auxiliary building roof are not reduced. As a result, the design function of the auxiliary building structure is not adversely affected by the proposed changes. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the changes described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to UFSAR descriptions and figures are proposed to address changes in the detail design of the auxiliary building roof. The thickness, geometry, and strength of the structures are not adversely altered. The concrete and reinforcement materials are not altered. The properties of the concrete are not altered. The changes to the design details of the auxiliary building structure do not create any new accident precursors. As a result, the design function of the auxiliary building structure is not adversely affected by the proposed changes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The criteria and requirements of American Concrete Institute (ACI) 349 and American Institute of Steel Construction (AISC) N690 provide a margin of safety to structural failure. The design of the auxiliary building structure conforms to applicable criteria and requirements in ACI 349 and AISC N690 and therefore maintains the margin of safety. The proposed changes to the UFSAR address changes in the detail design of the auxiliary

building roof. There is no change to design requirements of the auxiliary building structure. There is no change to the method of evaluation from that used in the design basis calculations. There is not a significant change to the in structure response spectra. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: March 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17090A209.

Description of amendment request: The requested amendment proposes changes to combined operating license (COL) Appendix C (and plant-specific Tier 1) and Updated Final Safety Analysis Report (UFSAR) Tier 2 that describe; (1) the inspection and analysis of, and specifies the maximum calculated flow resistance acceptance criteria for, the fourth-stage (automatic depressurization system (ADS) loops; (2) revises licensing basis text in COL Appendix C (and plant-specific Tier 1) and UFSAR Tier 2 that describes the testing of, and specifies the allowable flow resistance acceptance criteria for, the in-containment refueling water storage tank (IRWST) injection line; (3) revises licensing basis text in COL Appendix C (and plant-specific Tier 1) and UFSAR Tier 2 that describes the testing of, and specifies the maximum flow resistance acceptance criteria for, the containment recirculation line; (4) revises licensing basis text in COL Appendix C (and plant-specific Tier 1) and UFSAR Tier 2 that specifies acceptance criteria for the maximum flow resistance between the IRWST drain line and the containment; and (5) removes licensing basis text from UFSAR Tier 2 that discusses the operation of swing check valves in current operating plants. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not adversely affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events. The proposed changes do not adversely affect the physical design and operation of the in-containment refueling water storage tank (IRWST) injection, drain, containment recirculation, or fourth-stage automatic depressurization system (ADS) valves, including as-installed inspections and maintenance requirements as described in the Updated Final Safety Analysis Report (UFSAR). Inadvertent operation or failure of the fourth-stage ADS valves are considered as an accident initiator or part of an initiating sequence of events for an accident previously evaluated. However, the proposed change to the test methodology and calculated flow resistance for the fourth-stage ADS lines does not adversely affect the probability of inadvertent operation or failure. Therefore, the probabilities of the accidents previously evaluated in the UFSAR are not affected.

The proposed changes do not adversely affect the ability of IRWST injection, drain, containment recirculation, and fourth-stage ADS valves to perform their design functions. The designs of the IRWST injection, drain, containment recirculation, and fourth-stage ADS valves continue to meet the same regulatory acceptance criteria, codes, and standards as required by the UFSAR. In addition, the proposed changes maintain the capabilities of the IRWST injection, drain, containment recirculation, and fourth-stage ADS valves to mitigate the consequences of an accident and to meet the applicable regulatory acceptance criteria. The proposed changes do not adversely affect the prevention and mitigation of other abnormal events, *e.g.,* anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that might initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes do not adversely affect the physical design and operation of the IRWST injection, drain, containment recirculation, and fourth-stage ADS valves, including as-installed inspections, and maintenance requirements, as described in the UFSAR. Therefore, the operation of the IRWST injection, drain, containment recirculation, and fourth-stage ADS valves is not adversely affected. These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain existing safety margins. The proposed changes verify and maintain the capabilities of the IRWST injection, drain, containment recirculation, and fourth-stage ADS valves to perform their design functions. The proposed changes maintain existing safety margin through continued application of the existing requirements of the UFSAR, while updating the acceptance criteria for verifying the design features necessary to ensure the IRWST injection, drain, containment recirculation, and fourth-stage ADS valves perform the design functions required to meet the existing safety margins in the safety analyses. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced.

Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710

Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 25, 2017, as supplemented by letter dated March 21, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17044A149 and ML17080A405.

Description of amendment request: The amendments would revise certain Surveillance Requirements (SRs) in Technical Specification (TS) 3.8.1, ''AC [Alternating Current] Sources—Operating.'' The request is for changes in the use of steady state voltage and frequency acceptance criteria for onsite standby power source of the diesel generators (DGs), allowing for the use of new and more conservative design analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed amendment would provide more restrictive acceptance criteria for certain DG technical specification surveillance tests. The proposed acceptance criteria changes would help to ensure the DGs are capable of carrying the electrical loading assumed in the safety analyses that take credit for the operation of the DGs. [The proposed changes] would not affect the capability of other structures, systems, and components to perform their design function, and would not increase the likelihood of a malfunction.

Therefore, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes would provide more restrictive acceptance criteria to be applied to existing technical specification surveillance tests that demonstrate the capability of the facility DGs to perform their design function. The proposed acceptance criteria changes would not create any new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed DG surveillance requirement changes to voltage and frequency test acceptance criteria are conservative because the minimum steady state voltage increase and the narrowing of the acceptable steady-state frequency range validates use of existing design basis analysis for these test acceptance criteria. Both changes support the use of conservative administrative controls that remain in place, allowing [the] use of the new test acceptance criteria in test procedures until technical specifications reflect these new requirements. The conduct of surveillance tests on safety related plant equipment is a means of assuring that the equipment is capable of maintaining the margin of safety established in the safety analyses for the facility. The proposed amendment does not affect DG performance as described in the design basis analyses, including the capability for the DG to attain and maintain required voltage and frequency for accepting and supporting plant safety loads, should a DG start signal occur. The proposed amendment does not introduce changes to limits established in accident analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Damon D. Obie, Associate General Counsel, Talen Energy Supply, LLC, 835 Hamilton St., Suite 150, Allentown, PA 18101.

NRC Branch Chief: James G. Danna.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3 (BFN), Limestone County, Alabama

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2 (WBN), Rhea County, Tennessee

Date of amendment request: April 5, 2017. A publicly-available version is in ADAMS under Accession No. ML17096A620.

Description of amendment request: The amendments would modify technical specification surveillance requirements (SRs) that currently operate ventilation systems with charcoal filters for 10 hours each month in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.'' Specifically, BFN SRs 3.6.4.3.1 and 3.7.3.1, and WBN SRs 3.6.9.1 and 3.7.12.1 are being revised to require operation of the systems for 15 continuous minutes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing Surveillance Requirements to operate the SGT [Standby Gas Treatment] and CREV [Control Room Emergency Ventilation] systems for BFN and the EGT [Emergency Gas Treatment] and ABGT [Auxiliary Building Gas Treatment] systems for WBN, equipped with electric heaters for a continuous 10 hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

These systems are not accident initiators and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing changes are consistent with current regulatory guidance for these systems and will continue to assure that these systems perform their design function which may include mitigating accidents. Thus the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces existing Surveillance Requirements to operate the SGT and CREV systems for BFN and the EGT and ABGT systems for WBN, equipped with electric heaters for a continuous 10 hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

The change proposed for these ventilation systems does not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing Surveillance Requirements to operate the SGT and CREV systems for BFN and the EGT and ABGT systems for WBN, equipped with electric heaters for a continuous 10 hour period every 31 days with a requirement to operate the systems for 15 continuous minutes with heaters operating.

The design basis for the ventilation systems' heaters is to heat the incoming air which reduces the relative humidity. The heater testing change proposed will continue to demonstrate that the heaters are capable of heating the air and will perform their design function. The proposed change is consistent with regulatory guidance.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., WT 6A, Knoxville, TN 37902.

NRC Branch Chief: Benjamin G. Beasley.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 16, 2017. A publicly-available version is in ADAMS under Accession No. ML17075A229.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' Table 3.3.1–1, to increase the values for the nominal trip setpoint and the allowable value for Function 14.a. ''Turbine Trip—Low Fluid Oil Pressure.'' The proposed amendment also requests changes in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–493, Revision 4, ''Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Settings] Functions,'' Option A, for the affected turbine trip on low fluid oil pressure function setpoints only.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change reflects a design change to the turbine control system that results in the use of an increased control oil [system pressure], necessitating a change to the value at which a low fluid oil pressure initiates a reactor trip on turbine trip. The low fluid oil pressure is an input to the reactor trip instrumentation in response to a turbine trip event. The value at which the low fluid oil initiates a reactor trip is not an accident initiator. A change in the nominal control oil pressure does not introduce any mechanisms that would increase the probability of an accident previously analyzed. The reactor trip on turbine trip function is initiated by the same protective signal as used for the existing auto stop low fluid oil system trip signal. There is no change in form or function of this signal and the probability or consequences of previously analyzed accidents are not impacted.

The proposed change also adds test requirements to the low fluid oil pressure TS instrument function related to those variables to ensure that instruments will function as required to initiate protective systems or actuate mitigating systems at the point assumed in the applicable setpoint calculation. Surveillance tests are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the low fluid oil pressure TS instrument function for which surveillance tests are added are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The EHC [electrohydraulic control] fluid oil pressure rapidly decreases in response to a turbine trip signal. The value at which the low fluid oil pressure switches initiates a reactor trip is not an accident initiator. The proposed TS change reflects the higher pressure that will be sensed after the pressure switches are relocated from the auto stop low fluid oil system to the EHC high pressure header. Failure of the new switches would not result in a different outcome than is considered in the current design basis. Further, the change does not alter assumptions made in the safety analysis but ensures that the instruments perform as assumed in the accident analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The change involves a parameter that initiates an anticipatory reactor trip following a turbine trip. The safety analyses do not credit this anticipatory trip for reactor core protection. The original pressure switch configuration and the new pressure switch configuration both generate the same reactor trip signal. The difference is that the initiation of the trip will now be adjusted to a different system of higher pressure. This system function of sensing and transmitting a reactor trip signal on turbine trip remains the same. Also, the proposed change adds test requirements that will assure that technical specifications instrumentation allowable values: (1) Will be limiting settings for assessing instrument channel operability and; (2) will be conservatively determined so that evaluation of instrument performance history and the as left tolerance requirements of the calibration procedures will not have an adverse effect on equipment operability. The testing methods and acceptance criteria for systems, structures, and components, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis including the updated Final Safety Analysis Report. There is no impact to safety analysis acceptance criteria as described in the plant licensing basis because no change is made to the accident analysis assumptions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Sherry A. Quirk, General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Benjamin G. Beasley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination,

and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendment request: June 29, 2016.

Description of amendment request: The amendments revised the Technical Specifications (TSs) for PVNGS, by modifying the TS requirements to address Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems,'' as described in TS Task Force [TSTF]-523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

Date of issuance: May 16, 2017.

Effective date: As of the date of issuance and shall be implemented within 1 year from the date of issuance.

Amendment Nos.: Unit 1—202, Unit 2—202, and Unit 3—202. A publicly available version is in ADAMS under Accession No. ML17123A435; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** August 16, 2016 (81 FR 54613).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 2017.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 21, 2016. A publicly-available version is in ADAMS under Accession No. ML16209A223.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) for the Oconee Nuclear Station, Units 1, 2, and 3 (ONS); specifically, TS 2.1.1.1, ''Reactor Core SLs [Safety Limits],'' and TS 5.6.5, ''Core Operating Limits Report (COLR),'' to allow the use of the COPERNIC fuel performance code.

Date of issuance: May 11, 2017.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 403, 405, and 404. A publicly-available version is in ADAMS under Accession No. ML17103A509; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 14, 2017 (82 FR 10593).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 2017.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: June 28, 2016, as supplemented by letter dated, August 11, 2016, August 18, 2016, November 14, 2016, December 8, 2016, December 12, 2016, January 9, 2017, January 12, 2017, February 16, 2017, February 21, 2017, March 7, 2017.

Brief description of amendment: The amendment would revise the operating license and technical specifications to implement an increase in rated thermal power from the current licensed thermal power of 3486 megawatts (MWt) to a measurement uncertainty recapture thermal power of 3544 MWt.

Date of issuance: May 11, 2017.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance, or during the 2017 Refueling Outage if issued on May 13, 2017, or earlier.

Amendment No.: 241. A publicly-available version is in ADAMS under Accession No. ML17095A117; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 4, 2016 (81 FR 68470). The supplemental letter(s) dated August 11, 2016, August 18, 2016, November 14, 2016, December 8, 2016, December 12, 2016, January 9, 2017, January 12, 2017, February 16, 2017, February 21, 2017, and March 7, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 2017.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2 (ANO–2), Pope County, Arkansas

Date of application for amendment: October 27, 2016, as supplemented by letters dated December 2, 2016, and February 21, 2017.

Brief description of amendment: The amendment authorized a new risk-informed, performance-based fire protection licensing basis for ANO–2, with revised modifications, recovery actions, ignition frequencies, and the application of an NRC-approved fire modeling method. The amendment also revised Attachments M, ''License Condition Changes''; Attachment S, ''Plant Modifications and Items to be Completed during Implementation''; and Attachment W, ''Fire PRA [Probabilistic Risk Assessment] Insights,'' of the previously approved National Fire Protection Association (NFPA) 805 amendment.

Date of issuance: May 12, 2017.

Effective date: As of the date of issuance and shall be implemented as described in the transition license conditions.

Amendment No.: 306. A publicly-available version is in ADAMS under Accession No. ML17096A235; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–6: Amendment revised the renewed facility operating license.

*Date of initial notice in **Federal Register:*** January 31, 2017 (82 FR 8869). The supplemental letter dated February 21, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 2017.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 26, 2016.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements relating to the inservice inspection program required by the American Society of Mechanical Engineers (ASME) Boiler and Pressure Code and the inservice testing program required by the ASME Code for Operation and Maintenance of Nuclear Power Plants. The changes are based in part on Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.''

Date of issuance: May 16, 2017.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 225 (Unit 1) and 188 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17103A081; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–39 and NPF–85: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** October 25, 2016 (81 FR 73435).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 2017.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendments: May 24, 2016, as supplemented by letter dated October 25, 2016.

Brief description of amendments: The amendments eliminated the technical specifications (TS), Section 5.5, ''Inservice Testing Program,'' to remove requirements duplicated in American Society of Mechanical Engineers (ASME) Code for Operations and Maintenance of Nuclear Power Plants (OM Code), Case OMN–20, ''Inservice Test Frequency.'' A new defined term, ''INSERVICE TESTING PROGRAM,'' was added to TS Section 1.1, ''Definitions.'' This change to the TS is consistent with TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveilance Requirement] Usage Rule Application to Section 5.5 Testing,'' with deviations as described in the license amendment request dated May 24, 2016 (ADAMS Accession No. ML16148A047).

Date of issuance: May 11, 2017.

Effective date: As of the date of issuance and shall be implemented within 150 days from the date of issuance.

Amendment Nos.: 298 for DPR–66, 186 for NPF–73, 295 for NPF–3, and 175 for NPF–58. A publicly-available version is in ADAMS under Accession No. ML17081A509; the documents related to these amendments are listed in the Safety Evaluation enclosed with the amendment(s).

Facility Operating License Nos. DPR–66, NPF–73, NPF–3, and NPF–58: The amendments revised the Technical Specifications and the Licenses.

*Date of initial notice in **Federal Register:*** August 2, 2016 (81 FR 50732). The supplement dated October 25, 2016, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 2017.

No significant hazards consideration comments received: No.

PSEG Nuclear, LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station, and Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 30, 2016.

Brief description of amendments: The amendments revised the Cyber Security Plan (CSP) Milestone 8 implementation schedule for Hope Creek Generating Station (Hope Creek) and Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2. Specifically, this change extended the PSEG Nuclear LLC (PSEG) CSP Milestone 8 full implementation date as set forth in the PSEG CSP implementation schedule and revised the Renewed Facility Operating Licenses.

Date of issuance: May 16, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 204 (Hope Creek), 318 (Salem, Unit No. 1), and 299 (Salem, Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML17093A870; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–57, DPR–70, and DPR–75: The amendments revised the Renewed Facility Operating Licenses.

*Date of initial notice in **Federal Register:*** October 4, 2016 (81 FR 68471).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 2017.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield, South Carolina

Date of amendment request: July 19, 2016.

Brief description of amendments: The amendments change Combined License (COL) Nos. NPF–93 and NPF–94 for the VCSNS, Units 2 and 3. The amendments change the station's Updated Final Safety Analysis Reports (UFSAR) by departing from the incorporated AP1000 Design Control Document Tier 2 information and involve related changes to the combined operating license (COL) Appendix A Technical Specifications (TS). Specifically, the changes revise the COLs and plant-specific UFSAR Tier 2 information and TS to update the Protection and Safety Monitoring

System (PMS) to align with the standards of the Institute of Electrical and Electronics Engineers (IEEE) 603–1991, ''IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations.''

Date of issuance: April 10, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 69. Publicly-available versions are in ADAMS under Accession Nos. ML17041A020 and ML17041A022; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–93 and NPF–94: Amendments revised the COL UFSAR in the form of departures from the incorporated plant-specific DCD Tier 2 information and COL Appendix A TS.

Date of initial notice in ***Federal Register:*** August 30, 2016 (81 FR 59659).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 2017.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: December 16, 2016, and supplemented by letters dated January 12 and February 22, 2017.

Description of amendment: The amendment consists of changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant specific Design Control Document Tier 2 information. Specifically, the amendment consists of changes to the UFSAR to provide clarification of the interface criteria for nonsafety-related instrumentation that monitors safety-related fluid systems.

Date of issuance: May 1, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 76 and 75. A publicly-available version is in ADAMS under Accession Package No. ML17094A845; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined License Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** February 28, 2017 (82 FR 12130). The supplemental letters dated January 12, and February 22, 2017, provided additional information that clarified the application, did not expand the scope of the application request as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated May 1, 2017.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company (SNC), Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: March 4, 2016, as supplemented on January 31, 2017.

Description of amendment: This amendment revises License Condition (LC) 2.D(12)(d) related to initial Emergency Action Levels (EALs). The LC will require SNC to submit a fully-developed set of EALs before initial fuel load in accordance with the criteria defined in this license amendment.

Date of issuance: May 18, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 77 (Unit 3) and 76 (Unit 4). A publicly-available version is in ADAMS under Accession Package No. ML17045A537; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined License Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** August 2, 2016 (81 FR 50736). The supplemental letter dated January 31, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated May 18, 2017

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: February 16, 2017.

Brief description of amendment: The amendment revised the Technical Specification Containment Leakage Rate Testing Program to allow a one-time extension for the Type C local leak rate test for certain containment isolation valves.

Date of issuance: May 18, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 11. A publicly-available version is in ADAMS under Accession No. ML17123A228; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–96: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** March 14, 2017 (82 FR 13671).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 2017.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: May 10, 2016, as supplemented by letter dated October 18, 2016.

Brief description of amendments: The amendments would expand primary grade water lockout requirements in Technical Specification (TS) 3.2.E from being applicable in refueling shutdown (RSD) and cold shutdown (CSD) modes to being applicable in RSD, CSD, intermediate shutdown, and hot shutdown modes.

Date of issuance: May 10, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 288 (Unit 1) and 288 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17039A513; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 11, 2016 (81 FR 70187). The supplemental letter dated October 18, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 2017.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 24th day of May, 2017.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–11679 Filed 6–5–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting Notice

DATE: Weeks of June 5, 12, 19, 26, July 3, 10, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 5, 2017

There are no meetings scheduled for the week of June 5, 2017.

Week of June 12, 2017—Tentative

Tuesday, June 13, 2017

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting); (Contact: Tanya Parwani-Jaimes: 301–287–0730)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 15, 2017

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting); (Contact: Andrew Waugh: 301–415–5601)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 19, 2017—Tentative

There are no meetings scheduled for the week of June 19, 2017.

Week of June 26, 2017—Tentative

There are no meetings scheduled for the week of June 26, 2017.

Week of July 3, 2017—Tentative

There are no meetings scheduled for the week of July 3, 2017.

Week of July 10, 2017—Tentative

There are no meetings scheduled for the week of July 10, 2017.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 1, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–11731 Filed 6–2–17; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1014, 72–59, and 50–271; NRC–2017–0134]

Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station, Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an exemption request from Entergy Nuclear Operations, Inc. (Entergy) to allow the Vermont Yankee Nuclear Power Station (VYNPS) to load higher enriched fuel assemblies with certain lower enriched fuel assemblies in the same HI–STORM 100 multi-purpose canister (MPC) using Certificate of Compliance (CoC) No. 1014, Amendment No. 10. The NRC prepared an environmental assessment (EA) documenting its finding. The NRC concluded that the proposed action would have no significant environmental impact. Accordingly, the NRC staff is issuing a finding of no significant impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document are available on June 6, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0134 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0134. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1018; email: *Yen-ju.Chen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is reviewing an exemption request from Entergy, dated November 9, 2016 (ADAMS Accession No. ML16319A102), and supplemented by letter dated January 9, 2017 (ADAMS

Accession No. ML17010A300). Entergy is requesting an exemption from the requirements of title 10 of the *Code of Federal Regulations* (10 CFR) sections 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of section 72.212(b)(11) that requires compliance with the terms, conditions, and specifications of the CoC No. 1014, for spent fuel storage at the VYNPS independent spent fuel storage installation (ISFSI).

Specifically, Entergy requested an exemption from Appendix B, Table 2.1–3, Note 19 of Amendment No. 10 to CoC No. 1014, therefore allowing certain lower enriched channeled fuel assemblies classified as ''undamaged'' per the CoC to be loaded with higher enriched fuel assemblies in the same MPC.

II. Environmental Assessment Summary

Under the requirements of 10 CFR 51.21 and 51.30(a), the NRC staff developed a draft EA (ADAMS Accession No. ML16343A859) to evaluate the proposed Federal action, which is for the NRC to grant an exemption to Entergy to allow storing certain lower enriched fuel assemblies with higher enriched fuel assemblies in a HI–STORM 100 MPC at the VYNPS site.

The EA defines the NRC's proposed action (*i.e.,* to grant Entergy's exemption request per 10 CFR 72.7) and the purpose of and need for the proposed action. Evaluations of the potential environmental impacts of the proposed action and alternatives to the proposed action are presented, followed by the NRC's conclusion.

This EA evaluates the potential environmental impacts of granting the exemption to allow loading of higher enriched fuel assemblies with certain lower enriched fuel assemblies in a HI–STORM 100 MPC at the VYNPS ISFSI. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for the rulemaking to provide for the storage of spent fuel under a general license on July 18, 1990 (55 FR 29181). The EA for using the HI–STORM 100, Amendment No. 10, cask system (81 FR 13265) tiers off of the EA for the 1990 final rule.

There is no change to the types or quantities of effluents that may be released offsite, and there is no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. There is no change to the non-radiological effluents. The proposed action will take place within the site boundary, and does not have other environmental impacts. Therefore, the proposed action will not have a significant effect on the quality of the human environment. Therefore, the environmental impacts of the proposed action are no greater than those described in the EA for the rulemaking to add the HI–STORM 100, Amendment No. 10, cask system to 10 CFR 72.214.

III. Finding of No Significant Impact

The NRC staff has prepared an EA and associated FONSI in support of the proposed action. The NRC staff has concluded that the proposed action, for the NRC to grant an exemption, allowing the loading of certain lower enriched fuel assemblies with higher enriched fuel assemblies in the same HI–STORM 100 MPC, will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative. The environmental impacts are bounded by the previous NRC EA for the rulemaking to add the HI–STORM 100, Amendment No. 10, cask system to 10 CFR 72.214.

The NRC provided the Vermont Department of Health (VDOH) with a draft copy of the EA for a 30-day review on February 7, 2017 (ADAMS Accession No. ML17038A468). On March 16, 2017, the VDOH provided its comments (ADAMS Accession No. ML17080A475). The NRC staff responded to VDOH's comments on May 23, 2017 (ADAMS Accession No. ML17144A045). The NRC did not make changes to this EA as a result of VDOH's comments; however, the NRC will consider the VDOH's comments during the preparation of the safety evaluation report.

The NRC staff informed the Vermont State Historic Preservation Office (SHPO) of the NRC's ''no effects'' determination by letter dated February 9, 2017 (ADAMS Accession No. ML17040A337). The Vermont SHPO concurred on the NRC's determination by email on February 24, 2017 (ADAMS Accession Package No. ML17055A594, including ADAMS Accession Nos. ML17055A626 and ML17055A636). The staff reviewed the updated listings of endangered species and critical habitats, and no changes were identified since the staff's review in 2007 (ADAMS Accession Nos. ML072050012 and ML072050013).

The NRC staff has determined that this exemption would have no impact on historic and cultural resources or ecological resources, and therefore no consultations are necessary under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act.

Therefore, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

Dated at Rockville, Maryland, this 25th day of May, 2017.

For the Nuclear Regulatory Commission.

John McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–11687 Filed 6–5–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0243]

Information Collection: ''Licenses and Radiation Safety Requirements for Well Logging''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Licenses and Radiation Safety Requirements for Well Logging.''

DATES: Submit comments by July 6, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150–0130), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0243 when contacting the NRC about the availability of information for this action. You may obtain publicly-

available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0243.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement for 10 CFR part 39, Licenses and Radiation Safety Requirements for Well Logging (3150–0130) is available in ADAMS under Accession No. ML17082A497.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Licenses and Radiation Safety Requirements for Well Logging.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 9, 2017 (82 FR 10030).

1. *The title of the information collection:* 10 CFR part 39, ''Licenses and Radiation Safety Requirements for Well Logging.''

2. *OMB approval number:* 3150–0130.

3. *Type of submission:* Extension.

4. *The form number if applicable:* N/A

5. *How often the collection is required or requested:* Applications for new licenses and amendments may be submitted at any time (on occasion). Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Applicants and holders of specific licenses authorizing the use of licensed radioactive material for well logging.

7. *The estimated number of annual responses:* 4,226.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 44,931.

10. *Abstract:* Part 39 of title 10 of the *Code of Federal Regulations* (10 CFR), establishes radiation safety requirements for the use of radioactive material for well logging. The information in the applications, reports, and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Dated at Rockville, Maryland, this 1st day of June, 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–11659 Filed 6–5–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. PI2017–1; Order No. 3926]

Public Inquiry on City Carrier Costs

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a public inquiry to ascertain the Postal Service's progress and data collection capabilities to update its city carrier models. This notice informs the public of this proceeding, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 29, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Public Inquiry
IV. Public Representative
V. Ordering Paragraphs

I. Introduction

The Commission establishes Docket No. PI2017–1 in order to ascertain the Postal Service's progress in its ongoing efforts to update its city carrier cost models and data collection capabilities in accordance with Commission Order No. 2792 and to invite public comment on these topics.[1]

II. Background

In Order No. 2792, the Commission directed the Postal Service to investigate several issues, including the steps required to collect daily volume measurements for specified special studies and the feasibility of updating the cost model used to assign the costs of Sunday delivery hours and parcel routes. Order No. 2792 at 65–66. The Commission also directed the Postal Service to determine whether a single equation city carrier letter route cost model for street time could produce improved variability estimates. *Id.* at 65.

In its response to Order No. 2792, the Postal Service indicated that it had

[1] Docket No. RM2015–7, Order Approving Analytical Principles Used in Periodic Reporting (Proposal Thirteen), October 29, 2015 (Order No. 2792).

begun investigating different methods for gathering all of the data elements requested by the Commission.[2] There, the Postal Service noted that its investigation into the Commission's directive would have two distinct phases. *Id.* The Postal Service described the first phase as exploring whether the requisite data could be practically gathered and, if so, whether those data would be reliable and accurate. *Id.* It stated that the second phase was to determine whether it would be possible to use the obtained data to construct a single-equation city carrier letter route cost model for street time. *Id.* The Postal Service stated that it had only recently started to record the required data and that, therefore, it had just begun the first phase. *Id.*

In Docket No. ACR2015, the Postal Service reported that it had initiated an investigation into updating its city carrier Special Purpose Route (SPR) cost model for street time.[3] The Postal Service uses the SPR study data approved in Docket No. R97–1 in conjunction with current data from its In-Office Cost System (IOCS) to form SPRs street time cost pools and to develop attributable costs.[4] In its response to Order No. 2792, the Postal Service stated that it also was investigating the feasibility of using operational data to estimate variability equations for its parcel and collection route cost models.[5]

III. Public Inquiry

The Commission establishes PI2017–1 to obtain an update on the Postal Service's progress in investigating the data required for, and the viability of, a single equation city carrier letter route cost model as well as in reviewing the SPR cost model for street time.

Chairman's Information Request No. 1 is issued contemporaneously with this Notice and Order. It seeks an update to the Postal Service's Response to Order No. 2792 and further clarification on designated IOCS-estimated city carrier costs and City Carrier Cost System volumes.

Comments on these topics are due no later than August 29, 2017. Comments are to be submitted via the Commission's online filing system at *http://www.prc.gov,* unless a waiver is obtained. Information on how to obtain a waiver may be found by contacting the Commission's dockets office at 202–789–6846.

IV. Public Representative

Pursuant to 39 U.S.C. 505, Katalin K. Clendenin, is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

V. Ordering Paragraphs

It is ordered:

1. The Commission hereby establishes Docket No. PI2017–1 to review the Postal Service's progress towards the Commission directives in Order No. 2792 and to inquire about the current data and methodology used to estimate city carrier costs and City Carrier Cost System volumes.

2. Comments are due no later than August 29, 2017.

3. 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.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–11586 Filed 6–5–17; 8:45 am]

BILLING CODE 7710–FW–P

[2] Docket No. RM2015–7, Response of the United States Postal Service to Commission Order No. 2792, February 16, 2016, at 14 (Postal Service Response to Order No. 2792).

[3] *See* Docket No. ACR2015, Library Reference USPS–FY15–9, file ''USPS–FY15–9_Roadmap.pdf,'' December 29, 2015, at 122; Docket No. R97–1, Opinion and Recommended Decision, Volume 1, May 11, 1998, at 188 (Opinion and Recommended Decision).

[4] *See* Opinion and Recommended Decision at 188.

[5] The Commission's Order No. 2792 describes this as the cost model used to assign the costs of Sunday delivery hours and parcel routes. *See* Order No. 2792 at 66. The Postal Service describes this as the Parcel and Collection Route Models which are limited to non-Sunday city carrier SPR costs. Postal Service Response to Order No. 2792 at 16.

POSTAL SERVICE

Product Change—Priority Mail 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: *Effective date:* June 6, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 31, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 323 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–138, CP2017–196.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–11581 Filed 6–5–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80825; File No. SR–CHX–2017–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Shorten the Standard Settlement Cycle From Three Business Days After the Trade Date to Two Business Days After the Trade Date

May 31, 2017.

I. Introduction

On April 6, 2017, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to conform its rules to an amendment adopted by the Commission to Rule 15c6–1(a) under the Act [3] to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date (''T+3'') to two business days after the trade date (''T+2'').[4] The Commission adopted the amendment to Rule 15c6–1(a) under the Act to shorten the standard settlement cycle to T+2 on March 22, 2017 and set a compliance date of September 5, 2017.[5] The Exchange's proposed rule change was published for comment in the **Federal Register** on April 21, 2017.[6] The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.15c6–1.

[4] *See* Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (''SEC Adopting Release'').

[5] *See id.*

[6] *See* Securities Exchange Act Release No. 80467 (April 17, 2017), 82 FR 18800.

II. Description of the Proposal

The Exchange proposes to amend Article 1, Rule 2(e) and Article 9, Rule 7 to conform to the Commission's amendment to Rule 15c6–1(a) under the Act[7] which shortens the standard settlement cycle from T+3 to T+2 for most broker-dealer transactions.

Current Article 1, Rule 2(e)(1) relating to order settlement terms defines ''Regular Way Settlement'' as ''a transaction for delivery on the third full business day following the day of the contract.'' The Exchange proposes to shorten the ''third full business day'' time period to ''second full business day.''

Current Article 1, Rule 2(e)(2)(C) defines ''Seller's Option'' as ''a transaction for delivery within the time specified in the option, which time shall not be less than four (4) full business days nor more than 60 days following the day of the contract; except that the Exchange may provide otherwise in specific issues of stocks or classes of stocks.'' The Exchange proposes to shorten the ''four (4) full business days'' time period to ''three (3) full business days.''

Current Article 9, Rule 7(a) governing ex-dividend transactions provides in part that transactions in stocks shall be ex-dividend or ex-rights two full business days immediately preceding the date of record fixed by the corporation for the determination of stockholders entitled to receive such dividends or rights, except when such record date occurs upon a holiday or half-holiday, transactions in the stock shall be ex-dividend or ex-rights three full business days immediately preceding the record date. The Exchange proposes amendments to shorten the ''two full business days'' time period to a ''business day'' under Rule 7(a) and the ''three full business days'' time period to ''two full business days'' under Rule 7(a)(1).

The Exchange proposes similar changes to current Article 9, Rule 7(b) pertaining to ex-warrants that provides, in pertinent part, that transactions in securities which have subscription warrants attached (except those made for ''cash'') shall be ex-warrants on the second full business day preceding the date of expiration of the warrants, except when the day of expiration occurs on a holiday or Sunday, the transactions shall be ex-warrants on the third full business day preceding the day of expiration. The Exchange proposes to shorten the ''second full business day'' time period to a ''business day'' under Rule 7(b) and the ''third full business day'' time period to ''second full business day'' under Rule 7(b)(1).

III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of a national securities exchange be designed, among other things, 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 to protect investors and the public interest.

The Commission notes that the proposed rule change would amend Exchange rules to conform to the amendment that the Commission has adopted to Rule 15c6–1(a) under the Act[10] and support a move to a T+2 standard settlement cycle. In the SEC Adopting Release, the Commission stated its belief that shortening the standard settlement cycle from T+3 to T+2 will result in a reduction of credit, market, and liquidity risk,[11] and as a result, a reduction in systemic risk for U.S. market participants.[12] The compliance date for the amendment to Rule 15c6–1(a) under the Act is September 5, 2017.[13] The Exchange has represented that the operative date of the proposed rule change would correspond to the compliance date of the amendment to Rule 15c6–1(a) under the Act.

For the reasons noted above, the Commission finds that the proposal is consistent with the requirements of the Act and would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change, (SR–CHX–2017–06), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11609 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[7] *See id; see also supra* note 4.

[8] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* SEC Adopting Release, *supra* note 4.

[11] Credit risk refers to the risk that the credit quality of one party to a transaction will deteriorate to the extent that it is unable to fulfill its obligations to its counterparty on settlement date. Market risk refers to the risk that the value of securities bought and sold will change between trade execution and settlement such that the completion of the trade would result in a financial loss. Liquidity risk describes the risk that an entity will be unable to meet financial obligations on time due to an inability to deliver funds or securities in the form required though it may possess sufficient financial resources in other forms. *See id.,* 82 FR at 15564 n. 3.

[12] *See id.,* 82 FR at 15564.

[13] *See id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80822; File No. SR–BatsBZX–2017–38] Self-Regulatory

Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats BZX Exchange, Inc.

May 31, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''Bats'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 filed a proposal to amend fees for its Equities Platform (''BZX Fee Schedule'') and to amend fees for its Options Platform (''BZX Options Fee Schedule'') to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[6] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[7] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[8] and Rule 608 of Regulation NMS thereunder,[9] the CAT NMS Plan.[10] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[11] and approved by the Commission, as modified, on November 15, 2016.[12] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[13] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[14] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[15] Accordingly, Bats submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are Bats members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

- *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below[16])
- *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)
- *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a

[5] Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series or in the CAT NMS Plan.

[6] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

[7] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[11] Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[12] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''Approval Order'').

[13] The Plan also serves as the limited liability company agreement for the Company.

[14] Section 11.1(b) of the CAT NMS Plan.

[15] *Id.*

[16] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. Bats will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [17] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [18]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [19] The Commission further noted the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[20]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[21] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[22] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [23]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting

[17] Approval Order at 84796.

[18] *Id.* at 84794.

[19] *Id.* at 84795.

[20] *Id.* at 84794.

[21] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[22] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.,* an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[23] Approval Order at 84796.

fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[24] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[25] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[26] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[27]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [28] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[29] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[30]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[31] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[32]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [33] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [34]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[35] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.'' [36] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [37]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. Bats notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

[24] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[25] Approval Order at 85005.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 84796.

[29] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[30] Section 11.3(b) of the CAT NMS Plan.

[31] Section 11.2(c) of the CAT NMS Plan.

[32] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[33] Section 11.2(e) of the CAT NMS Plan.

[34] Approval Order at 84796.

[35] *Id.* at 84792.

[36] 26 U.S.C. 501(c)(6).

[37] Approval Order at 84793.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

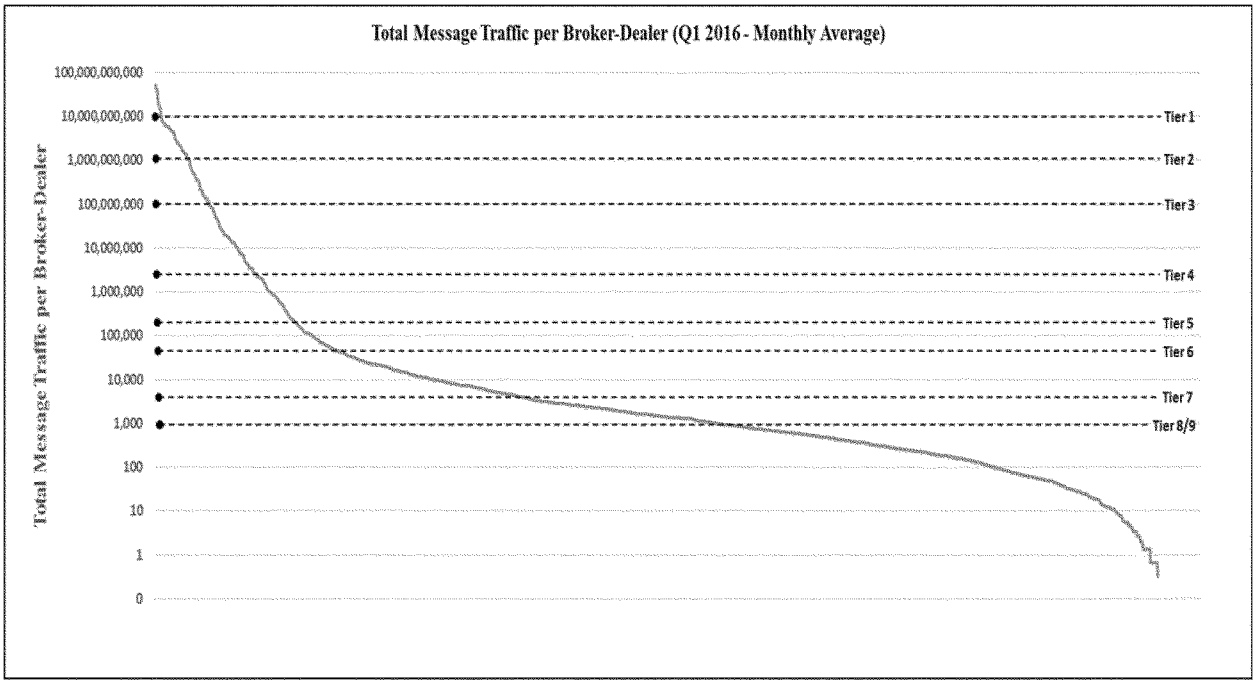
In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of

Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].



Industry Member tier	Monthly average message traffic per Industry Member (Orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of total recovery
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[38] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[39] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[40]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).''[41]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[42]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities

[38] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[39] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[40] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

[41] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[42] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for

fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and

equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[43]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual

[43] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[44] 5,000,000
	Insurance Costs	3,000,000
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees: [45]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [46]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [47]
1	$21,125	$63,375	$253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT fees paid annually [48]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

[44] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[45] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[46] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[47] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[48] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 0.5\%\ [\%\ \text{of Tier 1 IMs}] = 8\ [\text{Estimated Tier 1 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\ \%\ \text{of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{33{,}668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.5\%\ [\%\ \text{of Tier 2 IMs}] = 41\ [\text{Estimated Tier 2 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\ \%\ \text{of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{27{,}051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.125\%\ [\%\ \text{of Tier 3 IMs}] = 35\ [\text{Estimated Tier 3 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\ \%\ \text{of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{19{,}239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4.625\%\ [\%\ \text{of Tier 4 IMs}] = 75\ [\text{Estimated Tier 4 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\ \%\ \text{of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{6{,}655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 3.625\%\ [\%\ \text{of Tier 5 IMs}] = 59\ [\text{Estimated Tier 5 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\ \%\ \text{of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{4{,}163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4\%\ [\%\ \text{of Tier 6 IMs}] = 65\ [\text{Estimated Tier 6 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\ \%\ \text{of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{2,560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 17.5\%\ [\%\ \text{of Tier 7 IMs}] = 285\ [\text{Estimated Tier 7 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\ \%\ \text{of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 20.125\%\ [\%\ \text{of Tier 8 IMs}] = 328\ [\text{Estimated Tier 8 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\ \%\ \text{of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 45\%\ [\%\ \text{of Tier 9 IMs}] = 735\ [\text{Estimated Tier 9 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\%\ \text{of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{22}$$

CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 25\%\ [\%\ \text{of Tier 1 Equity EVs}]$$

$$= 13\ [\text{Estimated Tier 1 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\%\ \text{of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{21,125}$$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

$$52\ [\text{Estimated Tot. Equity EVs}]\ \times 75\%\ [\%\ \text{of Tier 2 Equity EVs}] =$$

$$40\ [\text{Estimated Tier 2 Equity EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\%\ \text{of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{12,940}$$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES ("EV")

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1	11

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 75\%\ [\%\ \text{of Tier 1 Options EVs}]$$

$$= 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}]\times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}]\times 20\%\ [\%\ \text{of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{19,205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 25\%\ [\%\ \text{of Tier 2 Options EVs}]$$

$$= 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}]\times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}]\times 5\%\ [\%\ \text{of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{13,204}$$

TRACEABILITY OF TOTAL CAT FEES

Type	Industry Member tier	Estimated number of members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720
	Tier 9	735	264	194,040
Total		1,631		38,033,484
Equity Execution Venues	Tier 1	13	253,500	3,295,500
	Tier 2	40	155,280	6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1	11	230,460	2,535,060
	Tier 2	4	158,448	633,792
Total		15		3,168,852
Total				50,709,036
Excess [49]				9,036

[49] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [50]

EXECUTION VENUE COMPLEXES

Execution Venue complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total fees by EV Complex
Execution Venue Complex 1	• Tier 1 (x2) • Tier 2 (x1)	• Tier 1 (x4) • Tier 2 (x2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (x2)	• Tier 1 (x2) • Tier 2 (x1)	$1,863,801
Execution Venue Complex 3	• Tier 1 (x2) • Tier 2 (x2)	• Tier 1 (x2)	$1,278,447

INDUSTRY MEMBER COMPLEXES

Industry Member Complex	Listing of Industry Member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (x2)	• Tier 2 (x1)	$963,300
Industry Member Complex 2	• Tier 1 (x1) • Tier 4 (x1)	• Tier 2 (x3)	949,674
Industry Member Complex 3	• Tier 1 (x1) • Tier 2 (x1)	• Tier 2 (x1)	883,888
Industry Member Complex 4	• Tier 1 (x1) • Tier 2 (x1) • Tier 4 (x1)	• N/A	808,472
Industry Member Complex 5	• Tier 2 (x1) • Tier 3 (x1) • Tier 4 (x1) • Tier 7 (x1)	• Tier 2 (x1)	796,595

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. Bats will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[51]

[50] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

[51] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in

Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[52] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then Bats will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Bats notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, Bats notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

Bats proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on SRO's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 4.5 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[52] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

Bats proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[53] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1	25.00	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. Bats will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

Although the exact fee collection system and processes for CAT fees has not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[54]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, Bats proposes to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

Bats believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[55] which require, among other things, that the SRO rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers, and Section 6(b)(4) of the Act,[56] which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and

[53] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

[54] Section 11.4 of the CAT NMS Plan.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78f(b)(4).

other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. Bats believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

Bats believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist Bats and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [57] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, Bats believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

Bats believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, Bats believes that the total level of the CAT Fees is reasonable.

In addition, Bats believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, Bats believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, Bats believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act [58] require that SRO rules not impose any burden on competition that is not necessary or appropriate. Bats does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Bats notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist Bats in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, Bats believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, Bats does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, Bats does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, Bats believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [59] and paragraph (f) of Rule 19b–4 thereunder.[60] 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

[57] Approval Order at 84697.

[58] 15 U.S.C. 78f(b)(8).

[59] 15 U.S.C. 78s(b)(3)(A).

[60] 17 CFR 240.19b–4(f).

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 proposal 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–BatsBZX–2017–38 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–BatsBZX–2017–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–38 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11606 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80827; File No. SR–ISE–2017–48]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program To Quote and To Trade Certain Options Classes in Penny Increments

May 31, 2017.

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 25, 2017, Nasdaq ISE, LLC (''ISE'' 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 extend a pilot program to quote and to trade certain options classes in penny increments (''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2017.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2017, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2017. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2016, and ending May 31, 2017). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 79721 (January 3, 2017), 82 FR 2433 (January 9, 2017) (SR–ISE–2016–32).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2017–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2017–48 and should be submittedon or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11611 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 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.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80823; File No. SR–MRX–2017–06]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program To Quote and To Trade Certain Options Classes in Penny Increments

May 31, 2017.

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 25, 2017, Nasdaq MRX, LLC (''MRX'' 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 extend a pilot program to quote and to trade certain options classes in penny increments (''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq–100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2017.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2017, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2017. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2016, and ending May 31, 2017). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2017–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2017–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

[3] *See* Exchange Act Release No. 79740 (January 4, 2017), 82 FR 3059 (January 10, 2017) (SR–ISE Mercury–2016–26).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19–4(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.

submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MRX–2017–06 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11607 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80819; File No. SR–CTA/CQ–2017–02]

Consolidated Tape Association; Notice of Withdrawal of the Twenty-Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated CQ Plan

May 31, 2017.

I. Introduction

On March 2, 2017, the participants (''Participants'')[1] of the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (collectively, ''Plans'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the of the Securities Exchange Act of 1934[2] and Rule 608 thereunder,[3] amendments to the Plans (''Amendments'') to modify and clarify certain fees.[4] The Amendments were published for comment in the **Federal Register** on March 28, 2017.[5] The Commission received eleven comment letters[6] on the Amendments and a response letter filed by the Participants.[7]

The Commission is publishing this notice to reflect that on April 27, 2017, prior to the end of the 60-day period provided for in Exchange Act Rule 608(b)(iii), the Participants withdrew the Amendments.[8]

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11580 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[1] The Participants are: BATS Exchange, Inc., BATS–Y Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors' Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a national market system plan.

[5] *See* Securities Exchange Act Release No. 80300 (March 23, 2017), 82 FR 15404 (March 28, 2017) (SR–CTA/CQ–2017–02) (Notice of Filing and Immediate Effectiveness for the Amendments).

[6] *See* Letter to Brent J. Fields, Secretary, Commission, from Brad Ward, dated April 17, 2017; Letter to Brent J. Fields, Secretary, Commission, from Marcus Mitchell, dated April 17, 2017; Letter to Brent J. Fields, Secretary, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated April 18, 2017; Letter to Brent J. Fields, Secretary, Commission, from Greg Babyak, Global Regulatory and Policy Group, Bloomberg LP, dated April 18, 2017; Letter to Brent J. Fields, Secretary, Commission, from Jay Froscheiser, Vice President, DTN/Schneider Electric, dated April 18, 2017; Letter to Brent J. Fields, Secretary, Commission, from Edward Foda, dated April 19, 2017; Letter to Brent J. Fields, Secretary Commission, from Anonymous, dated April 20, 2017; Letter to Brent J. Fields, Secretary, Commission, from David Craig, President, Thompson Reuters, dated April 21, 2017; Letter to Brent J. Fields, Secretary, Commission, from Sefano Durdic, Managing Director, R2G, dated April 24, 2017; Letter to Brent J. Fields, Secretary, Commission, from David Jenkins, received April 26, 2017; and, Letter to Brent J. Fields, Secretary, Commission, from Sihyang Lee dated April 27, 2017.

[7] Letter to Brent J. Fields, Secretary, Commission, from Emily Kasparov, Chairman, CTA/CQ Operating Committee, dated April 24, 2017.

[8] Letter to Brent J. Fields, Secretary, Commission, from Emily Kasparov, Chairman, CTA/CQ Operating Committee, dated April 27, 2017.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80820; File No. SR–Phlx–2017–40]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Openings in Options Rule

May 31, 2017.

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 22, 2017, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The 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 1017, Openings in Options, to conform this rule to recently filed Nasdaq ISE, LLC (''ISE'') Rule 701.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules relating to its opening process to conform the rule to a recently filed ISE rule change.[3]

Conform Rule Text to ISE Rule

ISE recently filed to adopt Phlx's Opening Process.[4] In adopting this rule, certain non-substantive modifications were made to the ISE rule text to further clarify the manner in which the Opening Process occurs. At this time, the Exchange proposes to amend Phlx Rule 1017 to conform certain rule text to ISE Rule 701.

With respect to the definitions at Rule 1017(a), ISE alphabetized the definitions. Phlx proposes to reorder the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 80225 (March 13, 2017), 82 FR 14243 (March 17, 2017)(SR–ISE–2017–02).

[4] *See* note 3 above.

definitions to alphabetize them as well, so they are ordered in the same manner as ISE Rule 701, where applicable.[5] Please note that the Phlx definitions remain the same referring to Phlx specific definitions and the applicable cross-references except for the changes noted hereafter. The definition of Quality Opening Market at proposed Rule 1017(a)(viii) is being expanded to conform to ISE's Rule. The Exchange proposes to add more information in this definition about what the calculation for Quality Opening Market is based on, namely the best bid and offer of Valid Width Quotes. Also, the Exchange notes that the differential between the best bid and offer are compared to reach this determination. The Exchange makes clear that the allowable differential, as determined by the Exchange, takes into account the type of security (for example, Penny Pilot versus non-Penny Pilot issue), volatility, option premium, and liquidity. The Exchange notes that the Quality Opening Market differential is intended to ensure the price at which the Exchange opens reflects current market conditions. This proposal does not change the calculation of Quality Opening Market, but provides more context to market participants to understand the manner in which the Exchange arrives at a Quality Opening Market for further clarity.

Rule 1017(b) proposes to amend text explaining what interest is included in the Opening Process. The rule today specifies what may be submitted, the elimination of redundant text simply makes clear what will not be included in the Opening Process. Quotes other than Valid Width Quotes will not be included in the Opening Process. The purpose of this change was to make the rule text simple and clear. The rule continues to make clear what interest will be included within the Opening Process. Phlx Rule 1017(b)(ii) is adding a reference to Rule 1014 for allocation purposes similar to ISE Rule 713.

Rule 1017(d)(i) proposes to amend the rule text to clarify that any of the options for opening with a Valid Width Quote in Rule 1017(d)(i)(A)–(C) may apply. The word ''either'' was not as clear that there were three choices for opening the market. In addition, the Exchange proposes to add the words ''for the underlying currency'' to describe that for U.S. dollar-settled foreign currency options it would be within two minutes of the market opening for the underlying currency. The reference should help readers understand which security is being discussed for the opening. Finally within this paragraph the Exchange is removing the capitalization from ''Opening Price'' because the opening price being referenced is the opening price for the undelying [sic] index, not the Opening Price as defined in Rule 1017.

Rule 1017(d)(ii) proposes to rearrange the rule text for clarity to make clear that for all options, for the Opening Process to commence the underlying security must be open on the primary market. The Exchange is not proposing to substantively amend the process. The proposed text changes make clear the purpose of the paragraph by explaining that the text explains a prerequisite for the Opening Process.

Rule 1017(d)(iv) proposes to add a ''this'' before Rule 1017 for emphasis. The Exchange proposes to segregate Rule 1017(d)(v) rule text to explain when an ABBO becomes crossed. Other minor changes are proposed to this section to simply clarify the rule text.

Rule 1017(f) proposes to amend the rule text to account for three conditions that must all exist to open with a PBBO. The change emphasizes the conditions, three of them, that must be met to open with a PBBO.

Rule 1017(h) proposes to amend the rule text to clarify that orders include Opening Sweeps. Opening Sweeps is already mentioned in the rule text, the placement of its mention is changed so that it is subcategorized in thinking about orders. The rule text also cross-references to Potential Opening Price to provide a roadmap within the rule.

Rule 1017(h)(C) proposes to add clarifying text to specify the Potential Opening Price is bounded by the better away market. The word ''limited'' was previously used and is being replaced by another word ''bounded'' to describe the same process. The ''better'' is added to clarify that it is the away market that is being considered.

Rule 1017(i) proposes to clarify the rule text with respect to the manner in which Opening with a Trade will occur. The proposed rule text simplifies the language in the rule. Rule 1017(i)(B)(2) proposes to insert the words ''would cross'' in place of ''that crosses.'' Also, additional language is proposed to be added to Rule 1017(i)(B)(2)(b) regarding the mid-point calculation. The current text simply notes that Exchange would open the option series for trading with an execution and use the best price which the Potential Opening Price crosses as a boundary price for the purposes of the mid-point calculation. The new text is more explicit, and makes clear that in order to calculate the midpoint, the Exchange will use the better of the Pre-Market BBO or ABBO as a boundary price, which is more specific than simply ''best price.'' Instead of stating the Exchange will open the option series for trading with an execution, the amendment adds ''at the resulting Potential Opening Price,'' which makes clear what price it would open with when opening with a trade. The current text does not explain what happens if the conditions described in Rule 1017(i)(B)(2) are not met. The proposed text once again provides a guidepost within the rule to make clear that if the conditions are not met, the text leads to paragraph (j) which describes the Opening Quote Range and thereafter, the Price Discovery Mechanism in paragraph (k).

Rule 1017(j) proposes to amend to clarify that the system will calculate an Opening Quote Range if the Exchange has not opened under any of the provisions from 1017(a)–(i). The word ''sub'' is proposed to be removed before the word ''paragraph'' in certain places throughout Rule 1017 because it is unnecessary.

Rule 1017(j)(3) proposes to amend the rule text to add more context to this paragraph. Currently, the rule text provides that if one or more away markets have disseminated opening quotes that are not crossed and there are Valid Width Quotes on the Exchange that cross each other or that cross away market quotes then the information in subparagraph (a) and (b) below would apply. The proposed new text uses the word ''disseminating'' for accuracy, because quotes are disseminated and instead of ''opening quotes'' the more precise ''BBO'' is utilized. A parenthetical is added to note that the Opening Process stops, because the market is crossed, and the series will not open if the ABBO becomes crossed as previously noted in Rule 1017(d)(v). This is another guidepost, in this case to emphasize again that the Exchange will not open with an ABBO that is crossed. The BBO cannot be crossed because it is indicative of uncertainty in the marketplace of where the option series should be valued. In this case, the Exchange will wait for the ABBO to become uncrossed before initiating the Opening Process to ensure that there is stability in the marketplace in order to assist the Exchange in determining the Opening Price. Rule 1017(j) indicates that the existence of all three conditions in Rule 1017(j)(1)–(3) warrant further price discovery to validate or perhaps update the Potential Opening Price and to attract additional interest to perhaps render an opening trade possible, because in the case of paragraph (2)

[5] Phlx market makers have different titles as compared to ISE market makers.

specifically, the lack of an ABBO means there is no external check on the Exchange's market for that options series. If there are Valid Width Quotes on the Exchange that are executable against (which language replaces the word ''cross'' which the Exchange believes has the same meaning as ''executable against'') each other or the ABBO (the ABBO is added for clarity in place of ''that cross away market quotes'') then subparagraphs (a) and (b) apply to determine an Opening Quote Range for a particular options series. These additions are intended to provide additional detail to the rule that the Exchange believes will be helpful to the reader.

Furthermore, the words ''away bid'' and ''away offer'' are replacements for the concepts of quote bid/offer among quotes on away markets in Rules 1017(j)(3)(a) and (b). The Exchange does not believe there is any difference in those words, simply a more efficient word usage choice.

Rule 1017(j)(4) proposes to replace the word ''opening quotes'' with the more specific defined term ''Valid Width Quotes.'' The Exchange recognizes that opening quotes was intended to have the meaning that is intended in Valid Width Quotes and incorrectly did not utilize the definition in the initial filing. The term Valid Width Quote is what was intended when the Exchange utilized the more general term ''opening quote.'' The word cross is being replaced with ''are executable against.'' The Exchange used the term cross in the Phlx original filing and is now conforming these words to the approved words in the ISE rule change ''are executable against'' to signify that no difference was intended. The Exchange believes that this is an example of different word choice. The words ''disseminating a BBO'' are being added in this paragraph to more clearly express that each exchange disseminates a BBO. An exchange broadcasts its market's best bid or offer by disseminating it publically so that other exchanges are aware of what is the away market BBO. This more specific language simply provides more context to the sentence.

Rule 1017(j)(5) proposes to replace certain language in that rule text with more clarifying language. The new rule text replaces the words ''through the'' OQR with ''wider than the'' OQR. The words were intended to mean that the OQR must be exceeded. The word choice was amended to ''wider than'' in the ISE filing to make this point. The same language is being amended in this rule for consistency. Also, the Exchange notes in this paragraph that ''If there is more than one Potential Opening Price possible where no contracts would be left unexecuted, any price used for the mid-point calculation (which is described in subparagraph (h) above) that is wider than the OQR will be restricted to the OQR price on that side of the market for the purposes of the *mid-point* calculation.'' The calculation is now being more specifically defined as the ''mid-point'' calculation to be clear at this point in the rule the mid-point is the calculation being discussed.

Rule 1017(j)(6) is being amended to add clarifying language. Currently the paragraph states ''[i]f there is more than one Potential Opening Price possible where no contracts would be left unexecuted and any price used for the mid-point calculation (which is described in subparagraph (h) above) an away market price when contracts will be routed, the system will use the away market price as the Potential Opening Price.'' The Exchange proposes to instead remove the reference ''and any price used for the mid-point calculation (which is described in subparagraph (h) above)'' and instead simply state ''pursuant to paragraph (h)(C)'' which describes the Potential Opening Price. The Exchange believes that the replacement language avoids confusion to the reader because as proposed it would reference the specific language in the rule.

Rule 1017(j)(7) is being amended to add clarifying language. Currently the paragraph states, ''If non-routable interest can be maximum executable against Exchange interest after routable interest has been determined by the system to satisfy the away market . . .'' The purpose of this sentence was intended to convey that the Exchange will attempt to execute as much interest as possible at the opening. It was suggested in the ISE filing that another way to state this concept was ''If the Exchange determines that non-routable interest can execute the maximum number of contracts against Exchange interest, after routable interest has been determined by the system to satisfy the away market . . .'' The Exchange amended the language in the ISE filing to be clear. The Exchange proposes the same revision in the Phlx rule text. This is not a substantive change. The current sentence goes on to state, ''then the Potential Opening Price is the price at which the maximum volume, excluding the volume which will be routed to an away market . . .'' The ISE rule change removed the references to ''volume'' and instead replaced the concept of volume as follows, ''then the Potential Opening Price is the price at which the maximum number of contacts can execute, excluding the interest which will be routed to an away market . . .'' The Exchange notes that the new language is more specific because instead of volume in the first instance, the concept is expanded to the number of contracts executed and instead of volume in the second instance, the concept of interest is more accurate.

Rule 1017(k)(A) proposes to add language for clarity. The paragraph starts, ''First, the system will broadcast an Imbalance Message.'' It was noted in the ISE filing that adding ''for the affected series'' would be more specific, because the message concerns a certain series. The sentence then states, ''(which includes the symbol, side of the imbalance (unmatched contracts), size of matched contracts, size of the imbalance, and *price* of the affected series which must be within the Pre-Market BBO) . . .'' Instead of just stating price, the revision includes the more specific reference to the defined term ''Potential Opening Price,'' which is the actual price being discussed in the paragraph. Because ''the affected series'' was added to the beginning of the sentence, where it was relocated, it is no longer needed at this point in the sentence. Finally, a sentence is being added to the end of the paragraph to simply make clear in the rule text, as was explained in the 19b–4, that each Imbalance Message is subject to an Imbalance Timer.

Rule 1017(k)(B) proposes to replace certain language in that rule text with more clarifying language. The current rule text states, ''If during or at the end of the Imbalance Timer, the Opening Price is at or within the OQR, the Imbalance Timer will execute at the Opening Price . . .'' The ISE filing replaces the words ''execute at'' with more explicit language ''open with a trade at'' to convey that the trade is the manner in which the Phlx opens the market. This is not a substantive change, but different word usage. The current rule text continues later, ''If no new interest comes in during the Imbalance Timer and the Opening Price is at or within OQR, the Exchange will open at the end of the Imbalance Timer.'' The ''Opening Price'' is again being more specifically changed to the defined term ''Potential Opening Price'' here and the concept is again added to the end of the sentence to make clear that the Exchange will open with a trade at the end of the Imbalance Timer at the Potential Opening Price. The new language makes clear again that the trade is the manner in which the Phlx opens the market at the Potential Opening Price.

Rule 1017(k)(C)(1) proposes to replace the words ''without trading'' with ''and would not trade'' for clarity. This is simply a change in word choice and is not a substantive change.

Rule 1017(k)(C)(2) replaces the word ''other'' with ''away'' to describe a market other than Phlx. The word ''simultaneously'' is added to describe the order in which the trade will occur and the timer will end. The word ''Potential Opening Price'' was added to demonstrate the effect on this price more clearly as described herein in Rule 1017(k)(B). The Exchange also proposes to amend language that references ''will trade'' to instead more accurately states ''will open with trades'' to more precisely express that the system will open with the trade.

Rule 1017(k)(C)(3) proposes to add a clause at the beginning of the text ''If no trade occurred pursuant to (2) above'' as a roadmap to connect the rule. The words ''without trading'' are proposed to be replaced with ''and would not trade'' for clarity. Also, the word ''series'' is being added after the word ''options'' for more specificity.

Rule 1017(k)(C)(3)(i) proposes to add the words ''better priced away'' to the beginning of the sentence. Currently, the sentence reads, ''If the total number of displayed contracts at better prices than the Exchange's Potential Opening Price on away markets (''better priced away contracts'') . . .'' The ISE filings just noted ''better priced away contracts'' rather than the more in depth explanation of displayed at better prices than the Exchange's Potential Opening Price on away markets (''better priced away contracts''), for simplicity. The language is being relocated to modify the term contract at the beginning of the sentence rather than at the end of the sentence. Finally, the language in the last sentence of this paragraph is being amended to replace ''routed to other away markets'' to ''routed to away markets.'' This is simply a verbiage change to match the ISE rule.

Rule 1017(k)(C)(3)(ii) proposes to amend the rule text to add a clause ''based on price/time priority of routable interest'' for clarity as to the allocation method being utilized in this instance to route the orders. By adding the allocation method to the rule text, it makes it clear to market participants the order in which the Exchange will route orders. Further, the term ''other'' is proposed to be replaced by ''away'' to describe markets other than ''Phlx''. References to ''Phlx'' and ''at the Exchange Opening Price'' is proposed to be removed as unnecessary and superfluous.

Rule 1017(k)(C)(3)(iii) proposes to amend the rule text to add a clause ''based on price/time priority of routable interest'' for clarity, as described in Rule 1017(k)(C)(3)(ii). Further, the term ''other'' is proposed to be replaced by ''away'' to describe markets other than ''Phlx''.

Rule 1017(k)(C)(5) proposes to add a term ''paragraph'' to provide more context to the reference to ''(4) above.'' Also, the words ''the series by executing'' is proposed to be added to the rule text to refer to what is being opened, which is the open series and the manner in which that will happen is with an execution. The language is more explicit. The term ''other'' is proposed to be replaced by ''away'' to describe markets other than ''Phlx''. A sentence is proposed to be added to the end of this rule text, ''All other interest will be eligible for trading after opening'' to provide context to the manner in which interest will be handled by the system.

Rule 1017(k)(D) proposes to remove the numbering as unnecessary and superfluous.

Rule 1017(k)(E) proposes to reword this rule text to add more clarity by adding the phrase, ''During the opening of the option series, where there is an execution possible,'' to give context to what follows, which is the manner in which the system will allocate order. The rule states the system will give priority to market orders first, in time priority. The words ''in time priority'' were removed as unnecessary because the Exchange references the specific allocation provision in Rule 1014(g)(vii). Quotes are added to the rule text because only limit orders were mentioned and quotes should have also been included to complete the interest that is available to trade.

Finally, Rule 1017(k)(F) proposes to reword the text to state, ''Upon opening of an option series'', instead of ''When the open series opens'' to provide a more accurate representation of the timing of that process. Also, the Exchange proposes to insert the phrase ''regardless of an execution'' to explain that an opening can occur with or without a trade. This language matches the ISE language.

As noted, the Exchange believes that these proposed amendments add clarity to the rule text, but the proposed amendments do not substantively amend the manner in which the Opening Process occurs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by conforming Phlx Rule 1017 to ISE Rule 701. The proposed language is non-substantive in nature and does not amend the manner in which Phlx's Opening Process occurs. Rather, the proposed language clarifies the existing language and provides more context to the manner in which the rule operates which amendments provide investors and the public interest with greater clarity as to the operation of the Opening Process.

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. Conforming Phlx's Rule to that of ISE is not a substantive amendment, the Phlx Opening Process will continue to operate in the same manner as today. The proposal does not change the intense competition that exists among the options markets for options business including on the opening. Nor does the Exchange believe that the proposal will impose any burden on intra-market competition; the Opening Process involves many types of participants and interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–40 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–Phlx–2017–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–40 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11604 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[9] 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.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80828; File No. SR–BOX–2017–18]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7260 by Extending the Penny Pilot Program Through December 31, 2017

May 31, 2017.

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 23, 2017, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 7260 by extending the Penny Pilot Program through December 31, 2017. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on June 30, 2017, until December 31, 2017.[3] The Penny Pilot Program permits certain classes to be quoted in penny increments. The minimum price variation for all classes included in the Penny Pilot Program, except for PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), will continue to be $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY, and IWM will continue to be quoted in $0.01 increments for all options series.

The Exchange may replace, on a semi-annual basis, any Pilot Program classes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. *See* Securities Exchange Act Release Nos. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No.10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67328 (June 29, 2012), 77 FR 40123 (July 6, 2012) (SR–BOX–2012–007), 68425 (December 13, 2012), 77 FR 75234 (December 19, 2013) (SR–BOX–2012–021), 69789 (June 18, 2013), 78 FR 37854 (June 24, 2013) (SR–BOX–2013–31), 71056 (December 12, 2013), 78 FR 76691 (December 18, 2013) (SR–BOX–2013–56), 72348 (June 9, 2014), 79 FR 33976 (June 13, 2014) (SR–BOX–2014–17), 73822 (December 11, 2014), 79 FR 75606 (December 18, 2014) (SR–BOX–2014–29), 75295 (June 25, 2015), 80 FR 37690 (July 1, 2015)(SR–BOX–2015–23), 78172 (June 28, 2016), 81 FR 43325 (July 1, 2016)(SR–BOX–2016–24) and 79429 (November 30, 2016), 81 FR 87991 (December 6, 2016)(SR–BOX–2016–55). The extension of the effective date and the revision of the date to replace issues that have been delisted are the only changes to the Penny Pilot Program being proposed at this time.

that have been delisted on the second trading day following July 1, 2017. The Exchange notes that the replacement classes will be selected based on trading activity for the six month period beginning December 1, 2016 and ending May 31, 2017 for the July 2017 replacements. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

BOX is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] 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, and to 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.

In particular, the proposed rule change, which extends the Penny Pilot until December 31, 2017 and changes the dates for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2017, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[6] and Rule 19b–4(f)(6) thereunder.[7]

(b) This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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–BOX–2017–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2017–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2017–18 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11612 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80821; File No. SR–BatsEDGX–2017–22]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats EDGX Exchange, Inc.

May 31, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2017, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''Bats'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend fees for its Equities Platform (''EDGX Fee Schedule'') and to amend fees for its Options Platform (''EDGX Options Fee Schedule'') to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[6] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[7] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act [8] and Rule 608 of Regulation NMS thereunder,[9] the CAT NMS Plan.[10] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[11] and approved by the Commission, as modified, on November 15, 2016.[12] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[13] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[14] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[15] Accordingly, Bats submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are Bats members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below) [16]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series or in the CAT NMS Plan.

[6] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

[7] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[11] Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[12] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''Approval Order'').

[13] The Plan also serves as the limited liability company agreement for the Company.

[14] Section 11.1(b) of the CAT NMS Plan.

[15] *Id.*

[16] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. Bats will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [17] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [18]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [19] The Commission further noted the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[20]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[21] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and

[17] Approval Order at 84796.

[18] *Id.* at 84794.

[19] *Id.* at 84795.

[20] *Id.* at 84794.

[21] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[22] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [23]

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[24] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[25] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[26] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[27]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [28] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[29] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[30]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[31] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[32]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [33] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [34]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[35] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.'' [36] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be

[22] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.,* an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[23] Approval Order at 84796.

[24] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[25] Approval Order at 85005.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 84796.

[29] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[30] Section 11.3(b) of the CAT NMS Plan.

[31] Section 11.2(c) of the CAT NMS Plan.

[32] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[33] Section 11.2(e) of the CAT NMS Plan.

[34] Approval Order at 84796.

[35] *Id.* at 84792.

[36] 26 U.S.C. 501(c)(6).

used to benefit individual Participants.'' [37]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. Bats notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

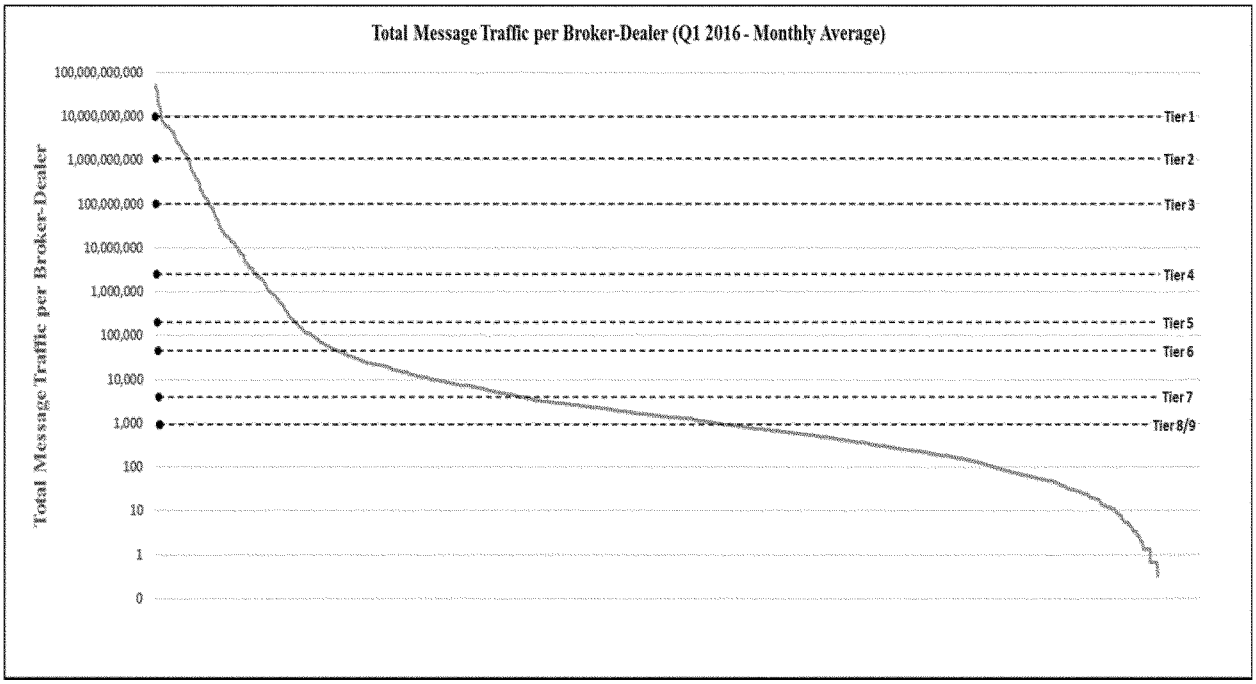
Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain

[37] Approval Order at 84793.

comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].



Industry Member tier	Monthly average message traffic per Industry Member (Orders, quotes and cancels)
Tier 1	>10,000,000,000
Tier 2	>1,000,000,000
Tier 3	>100,000,000
Tier 4	>2,500,000
Tier 5	>200,000
Tier 6	>50,000
Tier 7	>5,000
Tier 8	>1,000
Tier 9	≤1,000

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[38] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[39] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[40]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has

[38] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[39] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[40] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' [41]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[42]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery,

[41] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[42] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Equity Execution Venue tier	Equity market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

Options Execution Venue tier	Options market share of share volume (%)
Tier 1	≥1
Tier 2	<1

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75

percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[43]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

Cost category	Cost component	Amount
Plan Processor	Operational Costs	$37,500,000
Non-Plan Processor	Third Party Support Costs	5,200,000
	Operational Reserve	[44] 5,000,000
	Insurance Costs	3,000,000
Estimated Total		50,700,000

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees:[45]

For Industry Members (other than Execution Venue ATSs):

Tier	Monthly CAT fee	Quarterly CAT fee	CAT Fees paid annually[46]
1	$33,668	$101,004	$404,016
2	27,051	81,153	324,612
3	19,239	57,717	230,868
4	6,655	19,965	79,860
5	4,163	12,489	49,956
6	2,560	7,680	30,720
7	501	1,503	6,012
8	145	435	1,740
9	22	66	264

For Execution Venues for NMS Stocks and OTC Equity Securities:

[43] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

[44] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[45] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[46] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

Tier	Monthly CAT fee	Quarterly CAT fee	CAT Fees paid annually [47]
1	$21,125	$63,375	$253,500
2	12,940	38,820	155,280

For Execution Venues for Listed Options:

Tier	Monthly CAT fee	Quarterly CAT fee	CAT Fees paid annually [48]
1	$19,205	$57,615	$230,460
2	13,204	39,612	158,448

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS ("IM")

Industry Member tier	Percentage of Industry Members	Percentage of Industry Member recovery	Percentage of total recovery
Tier 1	0.500	8.50	6.38
Tier 2	2.500	35.00	26.25
Tier 3	2.125	21.25	15.94
Tier 4	4.625	15.75	11.81
Tier 5	3.625	7.75	5.81
Tier 6	4.000	5.25	3.94
Tier 7	17.500	4.50	3.38
Tier 8	20.125	1.50	1.13
Tier 9	45.000	0.50	0.38
Total	100	100	75

Industry Member tier	Estimated number of Industry Members
Tier 1	8
Tier 2	41
Tier 3	35
Tier 4	75
Tier 5	59
Tier 6	65
Tier 7	285
Tier 8	328
Tier 9	735
Total	1,631

[47] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

[48] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* "CAT Fees Paid Annually" = "Monthly CAT Fee" × 12 months).

Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 0.5\%\ [\%\ \text{of Tier 1 IMs}] = 8\ [\text{Estimated Tier 1 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\ \%\ \text{of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{33,668}$$

Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.5\%\ [\%\ \text{of Tier 2 IMs}] = 41\ [\text{Estimated Tier 2 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\ \%\ \text{of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{27,051}$$

Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 2.125\%\ [\%\ \text{of Tier 3 IMs}] = 35\ [\text{Estimated Tier 3 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\ \%\ \text{of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{19,239}$$

Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 4.625\%\ [\%\ \text{of Tier 4 IMs}] = 75\ [\text{Estimated Tier 4 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\ \%\ \text{of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{6,655}$$

Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}] \times 3.625\%\ [\%\ \text{of Tier 5 IMs}] = 59\ [\text{Estimated Tier 5 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\ \%\ \text{of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{4,163}$$

Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}]\ \times 4\%\ [\%\ \text{of Tier 6 IMs}] = 65\ [\text{Estimated Tier 6 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\ \%\ \text{of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{2,560}$$

Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}]\ \times 17.5\%\ [\%\ \text{of Tier 7 IMs}] = 285\ [\text{Estimated Tier 7 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\ \%\ \text{of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{501}$$

Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}]\ \times 20.125\%\ [\%\ \text{of Tier 8 IMs}] = 328\ [\text{Estimated Tier 8 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\ \%\ \text{of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{145}$$

Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)

$$1{,}631\ [\text{Estimated Tot. IMs}]\ \times 45\%\ [\%\ \text{of Tier 9 IMs}] = 735\ [\text{Estimated Tier 9 IMs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\%\ \text{of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{22}$$

CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES ("EV")

Equity Execution Venue tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	25.00	26.00	6.50
Tier 2	75.00	49.00	12.25
Total	100	75	18.75

Equity Execution Venue tier	Estimated number of Equity Execution Venues
Tier 1	13
Tier 2	40
Total	53

Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)

52 [Estimated Tot. Equity EVs] × 25% [% of Tier 1 Equity EVs]

= 13 [Estimated Tier 1 Equity EVs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\text{\% of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div$$

12 [Months per year] = $\mathbf{\$21,125}$

Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)

52 [Estimated Tot. Equity EVs] × 75% [% of Tier 2 Equity EVs] =

40 [Estimated Tier 2 Equity EVs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\text{\% of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div$$

12 [Months per year] = $\mathbf{\$12,940}$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES ("EV")

Options Execution Venue tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of total recovery
Tier 1	75.00	20.00	5.00
Tier 2	25.00	5.00	1.25
Total	100	25	6.25

Options Execution Venue tier	Estimated number of Options Execution Venues
Tier 1	11
Tier 2	4
Total	15

Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 75\%\ [\%\ \text{of Tier 1 Options EVs}]$$

$$= 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}]\times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}]\times 20\%\ [\%\ \text{of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{19,205}$$

Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)

$$15\ [\text{Estimated Tot. Options EVs}]\ \times 25\%\ [\%\ \text{of Tier 2 Options EVs}]$$

$$= 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}]\times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}]\times 5\%\ [\%\ \text{of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div$$

$$12\ [\text{Months per year}] = \$\mathbf{13,204}$$

TRACEABILITY OF TOTAL CAT FEES

Type	Industry member tier	Estimated number of members	CAT fees paid annually	Total recovery
Industry Members	Tier 1	8	$404,016	$3,232,128
	Tier 2	41	324,612	13,309,092
	Tier 3	35	230,868	8,080,380
	Tier 4	75	79,860	5,989,500
	Tier 5	59	49,956	2,947,404
	Tier 6	65	30,720	1,996,800
	Tier 7	285	6,012	1,713,420
	Tier 8	328	1,740	570,720
	Tier 9	735	264	194,040
Total		1,631		38,033,484
Equity Execution Venues	Tier 1	13	253,500	3,295,500
	Tier 2	40	155,280	6,211,200
Total		53		9,506,700
Options Execution Venues	Tier 1	11	230,460	2,535,060
	Tier 2	4	158,448	633,792
Total		15		3,168,852
Total				50,709,036
Excess [49]				9,036

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified

[49] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [50]

EXECUTION VENUE COMPLEXES

Execution Venue complex	Listing of Equity Execution Venue tiers	Listing of Options Execution Venue tier	Total fees by EV complex
Execution Venue Complex 1	• Tier 1 (x2) • Tier 2 (x1)	• Tier 1 (x4) • Tier 2 (x2)	$1,900,962
Execution Venue Complex 2	• Tier 1 (x2)	• Tier 1 (x2) • Tier 2 (x1)	1,863,801
Execution Venue Complex 3	• Tier 1 (x2) • Tier 2 (x2)	• Tier 1 (x2)	1,278,447

INDUSTRY MEMBER COMPLEXES

Industry Member complex	Listing of Industry Member tiers	Listing of ATS tiers	Total fees by IM complex
Industry Member Complex 1	• Tier 1 (x2)	• Tier 2 (x1)	$963,300
Industry Member Complex 2	• Tier 1 (x1) • Tier 4 (x1)	• Tier 2 (x3)	949,674
Industry Member Complex 3	• Tier 1 (x1) • Tier 2 (x1)	• Tier 2 (x1)	883,888
Industry Member Complex 4	• Tier 1 (x1) • Tier 2 (x1) • Tier 4 (x1)	• N/A	808,472
Industry Member Complex 5	• Tier 2 (x1) • Tier 3 (x1) • Tier 4 (x1) • Tier 7 (x1)	• Tier 2 (x1)	796,595

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. Bats will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[51] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[52] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then Bats will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective

[50] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

[51] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[52] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Bats notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, Bats notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

Period A			Period B		
Options Execution Venue	Market share rank	Tier	Options Execution Venue	Market share rank	Tier
Options Execution Venue A	1	1	Options Execution Venue A	1	1
Options Execution Venue B	2	1	Options Execution Venue B	2	1
Options Execution Venue C	3	1	Options Execution Venue C	3	1
Options Execution Venue D	4	1	Options Execution Venue D	4	1
Options Execution Venue E	5	1	Options Execution Venue E	5	1
Options Execution Venue F	6	1	Options Execution Venue F	6	1
Options Execution Venue G	7	1	Options Execution Venue I	7	1
Options Execution Venue H	8	1	Options Execution Venue H	8	1
Options Execution Venue I	9	1	Options Execution Venue G	9	1
Options Execution Venue J	10	1	Options Execution Venue J	10	1
Options Execution Venue K	11	1	Options Execution Venue L	11	1
Options Execution Venue L	12	2	Options Execution Venue K	12	2
Options Execution Venue M	13	2	Options Execution Venue N	13	2
Options Execution Venue N	14	2	Options Execution Venue M	14	2
Options Execution Venue O	15	2	Options Execution Venue O	15	2

(3) Proposed CAT Fee Schedule

Bats proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on SRO's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 4.5 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

Bats proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry

Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

Tier	Percentage of Industry Members	Quarterly CAT fee
1	0.500	$101,004
2	2.500	81,153
3	2.125	57,717
4	4.625	19,965
5	3.625	12,489
6	4.000	7,680
7	17.500	1,503
8	20.125	435
9	45.000	66

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[53] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

Tier	Percentage of Equity Execution Venues	Quarterly CAT fee
1	25.00	$63,375
2	75.00	38,820

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. Bats will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

Although the exact fee collection system and processes for CAT fees has not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[54]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, Bats proposes to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

Bats believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[55] which require, among other things, that the SRO rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers, and Section 6(b)(4) of the Act,[56] which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. Bats believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

Bats believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist Bats and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and

[53] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

[54] Section 11.4 of the CAT NMS Plan.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78f(b)(4).

perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [57] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, Bats believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

Bats believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, Bats believes that the total level of the CAT Fees is reasonable.

In addition, Bats believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, Bats believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, Bats believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [58] require that SRO rules not impose any burden on competition that is not necessary or appropriate. Bats does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Bats notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist Bats in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, Bats believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, Bats does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, Bats does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, Bats believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [59] and paragraph (f) of Rule 19b–4 thereunder.[60] 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 proposal 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 No. SR–BatsEDGX–2017–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[57] Approval Order at 84697.

[58] 15 U.S.C. 78f(b)(8).

[59] 15 U.S.C. 78s(b)(3)(A).

[60] 17 CFR 240.19b–4(f).

Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2017–22. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGX–2017–22 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11605 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80818; File No. SR–ICC–2017–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to ICC's Liquidity Risk Management Framework and ICC's Stress Testing Framework

May 31, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2017, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II and III below, which Items have been primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Liquidity Risk Management Framework and the ICC Stress Testing Framework. These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ICC proposes revisions to its Liquidity Risk Management Framework and to its Stress Testing Framework. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revisions are described in detail as follows.

Liquidity Risk Management Framework

ICC proposes to revise its Liquidity Risk Management Framework in order to make revisions to its liquidity monitoring program in order to enhance compliance with U.S. Commodity Futures Trading Commission (''CFTC'') regulations, including 17 CFR 39.11, 17 CFR 39.33and 17 CFR 39.36.

ICC proposes to reorganize the format of the Liquidity Risk Management Framework to consist of three elements: Liquidity Risk Management Model; Measurement and Monitoring; and Governance. The ''Regulatory Requirements'' section, previously included as an element of the framework, will be deleted; however, the regulatory requirements applicable to liquidity risk management are still referenced in the framework. The changes to each element of the Liquidity Risk Management Framework are described below.

Liquidity Risk Management Model

ICC proposes to enhance the description of the components which comprise its liquidity risk management model. As revised, the liquidity risk management model now includes, but is not limited to, the following components: Currency-specific risk requirements; acceptable collateral; liquidity requirements; collateral valuation methodology; investment strategy; Clearing Participant (''CP'') deposits as a liquidity pool; liquidity facilities (including committed repo facilities and committed foreign exchange (''FX'') facilities); and liquidity waterfall. Each of these components are described thoroughly within the Liquidity Risk Management Framework, and changes to each component are described below.

Currency-Specific Risk Requirements

ICC proposes to add language to the 'currency-specific risk requirements' section to cross reference ICC's current policy of maintaining cash and collateral assets posted by CPs (on behalf of themselves and/or their clients) to meet currency-specific Initial Margin (''IM'') and GF requirements, to ensure ICC has sufficient total resources in the required currencies of denomination.

Acceptable Collateral

The 'acceptable collateral' section remains the same, and notes that CPs may post IM and GF deposits that meet ICC's acceptable collateral criteria as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

described in ICC's Treasury Operations Policies and Procedures and Schedule 401 of the ICC Rules.

Liquidity Requirements

The 'liquidity requirements' section sets forth ICC's liquidity requirements for house/proprietary accounts and client-related accounts. Such requirements are also set forth in ICC's Treasury Operations Policies and Procedures and Schedule 401 of the ICC Rules. The 'liquidity requirements' section will reflect the changes to ICC's liquidity thresholds for Euro (''EUR'') denominated products set forth in filing SR–ICC–2017–002.[3] ICC revised the 'liquidity requirements' section to cross reference ICC's minimum U.S. Dollar (''USD'') contribution to the Guaranty Fund (''GF'') of $20 million required from every CP. This is not a change, but rather a statement of current policy.[4] ICC proposes revisions to the 'liquidity requirements' section to extend ICC's margin risk horizon up to 6-days, to account for the risk associated with clearing Asia Pacific products. This change will apply throughout the framework; the risk horizon is reflected as ''N-day'' where N≥5 is the margin risk horizon or Margin Period of Risk (MPOR). The margin risk horizon is based on the greatest MPOR (rounded up to the nearest integer) for the CDS instruments currently eligible for clearing in order to capture the risk associated with clearing products across multiple time zones (*i.e.* if an instrument is subject to 5.5 day MPOR estimations, then the scenarios will reflect N=6).

Collateral Valuation Methodology

The 'collateral valuation methodology' section remains substantially the same, and sets forth the method by which ICC prices the assets posted as collateral, including haircut calculations.

Investment Strategy

The 'investment strategy section' remains substantially the same, and sets forth a summary of ICC's investment strategy. ICC proposes revisions to the 'investment strategy' section to note that when beneficial, ICC diversifies its cash investments across multiple depository institutions to reduce its liquidity exposure to any single depository.

CP Deposits as a Liquidity Pool

The 'CP deposits as a liquidity pool' section remains substantially the same, and refers to the ability of ICC, pursuant to ICC Rules 402 and 804, to borrow GF and house origin IM cash deposits of non-defaulting CPs and pledge non-cash and cash assets of an equivalent value deposited by the defaulting and/or non-defaulting CP(s) as collateral for this loan.

Liquidity Facilities

ICC proposes revisions to the 'liquidity facilities' section to add reference to its committed repurchase facilities (as opposed to committed repurchase agreements). ICC added reference to its recently available committed FX facilities for converting USD cash to EUR cash. ICC also proposes removing reference to FX Swaps, Immediate FX Spot Transactions, because these arrangements do not count as ''qualifying liquidity resources'' under CFTC Regulation 39.33,[5] as they are not committed. ICC also proposes removing reference to the Intercontinental Exchange, Inc. committed line of credit, as ICC no longer participates in the arrangement. ICC's liquidity is not negatively impacted by the proposed changes, as the committed repo facilities and committed FX facilities (coupled with ICC cash and collateral deposits) ensure ICC remains fully able to timely and effectively contain liquidity pressures consistent with Rule 17Ad–22(d)(11).[6] ICC proposes analogous changes to the 'liquidity waterfall' section to reflect the deletion and addition of these references.

Liquidity Waterfall

Under the 'liquidity waterfall' section, ICC proposes revisions to its definition of Available Liquidity Resources (''ALR'') to note that ALR consist of the available deposits currently in cash of the required denomination, and the cash equivalent of the available deposits in collateral types that ICC can convert to cash, in the required currency of denomination, using all sources of liquidity available to it. For reference, the liquidity waterfall classifies ALR on any given day into four Levels. Level One includes the House IM and GF cash deposits of the defaulting CP. Level Two includes GF cash deposits of: (i) ICC; and (ii) non-defaulting CPs, which until ICC has consumed the cash equivalent value of all defaulting CPs' IM and GF deposits, are available to ICC after pledging an equivalent value of non-cash assets (or cash assets in a different currency) from the defaulting CP's IM deposits or GF deposits. Level Three includes House IM cash deposits of the non-defaulting CPs, which are available to ICC after pledging an equivalent value of non-cash assets (or cash assets in a different currency) from the defaulting CP's IM deposits or GF deposits. Level Three cash used by ICC is always a loan, against which it must provide the equivalent Pledgeable Collateral from the GF deposits of the non-defaulting CPs and ICC, and/or from the IM and/or GF deposits of the defaulting CPs.

Level Four includes ICC's committed repo facilities to convert U.S. Treasuries to USD cash and ICC's committed FX facilities to convert USD cash to EUR cash. Note that when determining ALR for stress testing analyses purposes, to account for the risk associated with Foreign Exchange (''FX'') rate fluctuations, *i.e.* USD/EUR and EUR/USD, when profits and funds denominated in one currency are used to offset losses denominated in other currencies, appropriate FX ''haircuts'' are applied.

ICC noted that ICC's liquidity stress testing and historical liquidity analysis scenarios do not consider any tolerance for delayed payouts. ICC also noted that, during a default management period, ICC may initiate the liquidation of non-cash collateral and/or conversion of cash collateral into the required currencies of denomination, so that ICC has additional ALR to use according to the liquidity waterfall on subsequent days of default management and/or is able to pay back some or all of the cash previously borrowed in Levels Two to Four of the liquidity waterfall.

Measurement and Monitoring

Methodology

ICC proposes changes to the 'methodology' section to change the calculation for available liquidity resources. In the historical and stress testing analysis, ICC proposes replacing the estimation of minimum available liquid resources based on risk requirements with the observation of cash and collateral on deposit (excluding cash that will be unavailable by the applicable ICC Payout Deadline because it has been invested by ICC). As such, ICC proposes removing the section from the Liquidity Risk Management Framework which described the process for computing the estimation of minimum available liquid resources. In

[3] *See* Securities Exchange Act Release No. 34–79988 (February 8, 2017), 82 FR 10611 (February 14, 2017). This rule change has been approved by the Commission. *See* Securities Exchange Act Release No. 34–80324 (March 28, 2017), 82 FR 16244 (April 3, 2017). The text of the proposed rule change for rule filing SR–ICC–2017–002 can also be found on ICC's Web site at *https://www.theice.com/clear-credit/regulation.*

[4] Set forth in Schedule 401 of the ICC Rulebook.

[5] 17 CFR 39.33

[6] 17 CFR 240.17Ad–22(d)(11).

addition, ICC proposes removing other references throughout the framework related to the estimation of minimum available liquid resources. ICC is changing its approach based on feedback from the CFTC, to ensure consistency with CFTC regulations, including CFTC Regulation 39.33.[7] Under the previous approach, ICC executed its stress test analysis by using the minimum requirement amounts based on ICC's liquidity thresholds set forth in Schedule 401 of the ICC Rules. Under the revised approach, ICC proposes executing stress test analysis by using the amount of assets currently on deposit.

ICC also proposes additional changes to the 'methodology' section. Among other things, the proposed revisions will clarify that ICC's measurement and monitoring methodology assesses the adequacy of ICC's established liquidity resources in response to historically observed and hypothetically created (forward looking) scenarios with risk horizons up to and including 6-days. The analyzed scenarios feature assumptions that directly impact the ability of ICC to meet its payment obligations. From available IM and GF collateral on deposit on the day of the considered default(s), the analysis determines currency-specific ALR by liquidity waterfall level, and compares these ALRs to the currency-specific Liquidity Obligations resulting from the analyzed scenarios on each day of the considered time horizon. To be conservative, the analysis assumes no client-related ALR and that only the day-1 ALR are available throughout the considered time horizon (*i.e.* the analysis does not consider ICC's ability during the considered time horizon to liquefy non-cash collateral on deposit or transform the currency of cash on deposit).

Historical Analysis

ICC proposes changes to the 'historical analysis' section of the framework. ICC proposes adding language to note that, as part of its historical liquidity analysis, ICC analyzes historical data sets to assess the level of liquidity coverage achieved for each currency. Under the revised framework, ICC will continue to conduct a historical liquidity analysis on both an individual AG basis and a cover-2 basis.

ICC proposes the use of the Basel Traffic Light System[8] to determine if the minimum cash component of its risk requirements truly covers historically observed 1-day liquidity obligations with a 99% level of confidence. The proposed revisions are part of the 'historical analysis' section. ICC's risk requirements are designed to meet at least a 99% N-day VaR equivalent level of coverage. CPs must meet their IM and GF requirements with a minimum cash component equivalent to the 1-day portion of the N-day requirement, computed using the square-root-of-time approach.[9]

ICC proposes additional enhancements to the 'historical analysis' section to consider the simultaneous default of the two worst-case Affiliate Groups (''AGs'')[10] of CPs, rather than the two worst-case CPs, in line with regulations, including 17 CFR 39.33(c)(1)(ii). Under the revised framework, when computing a CP's combined house and client origin liquidity obligation for the purposes of selecting which AGs are considered to be in a state of default, ICC proposes to eliminate the application of house origin gains against client origin losses, or house origin losses against client origin gains. This analysis is designed to demonstrate to what extent the liquidity resources available to ICC were sufficient to meet historical single and multi-day cover-2 Liquidity Obligations, consistent with 17 CFR 39.33(c)(1)(ii).

ICC proposes enhancements to the 'historical analysis' section to note that, for each day of its historical analysis, and on a currency specific basis, the Risk Department explores predefined cover-2 scenarios considering the default of the CPs within two AGs creating the largest remaining Liquidity Obligation after applying the IM and GF cash deposits of each constituent CP to that CP's Liquidity Obligation. ICC's cover-2 analysis considers the liquidity resources provided by the defaulting CPs, the GF and IM liquidity resources provided by the non-defaulting CPs and ICC, and any externally available liquidity resources.

ICC proposes clarifying changes to the 'historical analysis section' to note that the prices considered for historical analysis purposes are ''dirty'' prices as they include riskless (deterministic) payments (*i.e.* upfront fees, coupon payments, credit event payments and interest on mark-to-market margin). ICC proposes adding explanatory language regarding its calculation of the N-day worst-case cumulative (combined house and client origin) liquidity obligations. ICC proposes removal of a measurement and monitoring framework diagram, deemed no longer relevant or necessary in light of the larger changes to the framework. Finally, ICC proposes revisions to note that ICC reports cover-2 results from the observed immediate liquidity obligation scenarios and the worst-case five-day liquidity obligation scenarios. This audience of this reporting will depend on the results. ICC notes that the results should exhibit no deficiencies of the combined resources in Levels One through Four of the liquidity waterfall.

Stress Testing Analysis

ICC proposes changes to the 'stress testing' section of the framework. Under the previously approved framework, ICC used predefined scenarios believed to be potential market outcomes historically observed, but with a very low probability of occurrence, as well as scenarios that replicated observed instrument price changes during the Lehman Brothers default. ICC also used predefined scenarios designed to test the performance of the risk methodology under extreme conditions, which ICC did not expect the market to realize.

ICC proposes re-categorizing and adding to the stress testing scenarios set forth in the 'stress testing' section of the framework. Under the revised framework, ICC has enhanced its description of its historically observed extreme but plausible market scenarios, to note that the scenarios define spread or price shocks based on observations during specific historical events. The historical data set from which ICC derives the proposed scenarios will continue to begin on April 1, 2007 and include periods of extreme market events such as the Bear Stearns collapse, the Lehman Brothers default, the 2009 Credit Crisis, the US ''Flash Crash'' event, and the European Sovereign Crisis. The scenarios are similar to the stress testing currently performed under the financial resources Stress Testing Framework.

ICC proposes eliminating all scenarios not expected to be realized as market outcomes (*i.e.* those considered extreme and not plausible). Under the revised framework, ICC will continue to have the ability to execute liquidity analyses based on extreme but not plausible scenarios, on an ad-hoc basis. Further, ICC proposes revising the 'stress testing'

[7] 17 CFR 39.33.

[8] ''Supervisory Framework for the use of ''Backtesting'' in Conjunction with the Internal Models Approach to Market Risk Capital Requirements'', Section III: Supervisory framework for the interpretation of backtesting results, Basel Committee on Banking Supervision, January 1996.

[9] ''Amendment to the Capital Accord to Incorporate Market Risk'', Basel Committee on Banking Supervision, January 1996.

[10] An affiliated CPs is defined as any other CP that owns, is owned by or is under common ownership with such a CP. The set of all affiliated CPs is considered as a CP affiliate group. This term is consistent with ''participant family'' as defined in 17 CFR 240.17Ad–22(12).

section to add 1-day, 2-day, and N-day analogues in place of existing 5-day scenarios. Under the revised framework, each historically observed scenario will have three analogues, one representing a 1-day horizon, one representing a 2-day horizon and one representing a N-day horizon. Previously, only analogues representing a N-day horizon were considered. The addition of the 1-day analogue will demonstrate ICC's ability to meeting its immediate payment obligations over a one-day period (*e.g.* intraday and same-day obligations), while the 2-day and N-day analogues will demonstrate ICC's ability to meet its payment obligations over a multiday period.

ICC also proposes revising the 'stress testing' section of the framework to add a number of hypothetically constructed (forward looking) extreme but plausible market scenarios comprised of a given historically observed extreme but plausible market scenario and additional stress enhancements representing forward looking hypothetical adverse market events. Specifically, two sets of hypothetically constructed (forward looking) extreme but plausible market scenarios are proposed: Loss-given default scenarios, and one-service-provider-down scenarios. The loss-given default scenarios consider the addition of up to three adverse credit events including the holder of the considered portfolio, one additional CP name and one additional non-CP name. The one-service-provider-down scenarios consider a reduction in ALR designed to represent ICC's worst-case exposure to a single service provider at which it maintains cash deposits or investments, due to ICC's potential inability to access those deposits and/or investments when required. ICC proposes that the reduction in ALR used in the one-service-provider-down scenarios is based on ICC's analysis of the diversification of its deposits and investments across its multiple service providers.

ICC proposes revisions to the 'stress testing' section to further describe its analysis under the above referenced scenarios. ICC proposes revisions to consider the simultaneous default of the two worst-case Affiliate Groups (''AGs'') [11] of CPs, rather than the two worst-case CPs, in line with regulations, including 17 CFR 39.33(c)(1)(ii). ICC will perform cover-2 analysis in which, for each scenario, it determines the two AGs creating the largest remaining Liquidity Obligation after applying the IM and GF cash deposits of each constituent CP to its own Liquidity Obligation. ICC compares the remaining Liquidity Obligation of the AG to the remaining liquidity resources to determine if there are sufficient resources to meet the obligation.

ICC proposes enhancements to the 'stress testing' section to describe its cover-N analysis in which, for each scenario, it first considers the default of one AG, then the defaults of two AGs, then three AGs, and so forth. The sequence of selecting AGs is based on the remaining Liquidity Obligation associated with the constituent CP's portfolios after applying the IM and GF cash deposits of each constituent CP to its own Liquidity Obligation. AGs are sequenced from largest to smallest remaining Liquidity Obligation. For each set of AGs considered to be in a state of default (1 AG, 2 AGs, 3 AGs, etc.), ICC compares the total remaining Liquidity Obligation to the remaining liquidity resources to determine if there are sufficient resources to meet the obligation. In this way, ICC determines how many AGs it would require to be in a state of default to consume all available liquidity resources.

To determine the Liquidity Obligations in the above analysis, ICC applies the stress scenarios to actual cleared portfolios to determine a currency-specific profit/loss for each CP, representing the largest cumulative loss over the specified risk horizon. The considered profit/loss in the analysis is the sum of the upfront fee changes corresponding to the clean prices associated with the hypothetical scenarios, and excluding the riskless (deterministic) payments.

To determine ICC's liquidity needs for each scenario, the Risk Department computes Liquidity Obligations for FCM/BD CPs by combining the net payments for house and client origin accounts. For the purposes of selecting defaulting AGs, the Risk Department does not offset client origin losses with house origin gains, or offset house origin losses with client origin gains.

Governance

Required Analysis

The 'required analysis' section remains substantially the same. The ICC Risk Department executes stress testing daily, with weekly reporting to different audiences depending on the results. The Risk Department also executes monthly historical liquidity adequacy analyses and reviews the results monthly, with monthly reporting to different audiences depending on the results.

Interpretation of Results and Potential Actions

The 'interpretation of results and potential actions' section remains substantially the same. Depending on the scenarios and the frequency and severity of any resulting deficiencies, the Risk Department may choose to make appropriate enhancements to its model. Before enhancing its liquidity risk management model, ICC first discusses such enhancements with its senior management team, and subsequently consults with its Risk Working Group and Risk Committee before submitting to the Board of Managers for approval.

Materiality and Reporting Framework

ICC proposes changing the 'materiality and reporting framework' section to note that, at each Risk Committee meeting, the Risk Department provides a summary of historical liquidity analysis and liquidity stress testing analysis, which demonstrates the adequacy of ICC's liquidity resources to cover Liquidity Obligations over N-days. Such analyses will also include any instance where Level Three resources were required to meet Liquidity Obligations in response to any of the considered historical liquidity or liquidity stress testing scenarios.

ICC proposes revisions to the 'materiality and reporting framework' to note that, when exceedances of funded and/or unfunded resources are identified, the Risk Department is required to report them to the senior management team and the ICC Risk Committee, and (i) demonstrate breaches do not highlight a significant liquidity risk management weaknesses, or (ii) recommend specific liquidity risk management model enhancements that produce an adequate increase in funded and/or unfunded liquidity resources under the identified scenario(s). In addition to the reporting described above, the Risk Department will also report to the Risk Committee any instances where the Basel Traffic Light System categorizes the number of observed exceedances in its individual AG historical analysis as being in the predefined ''red zone''. In these instances, the Risk Department will discuss with the Risk Committee the appropriateness of its liquidity thresholds, and if appropriate, make revisions.

[11] An affiliated CPs is defined as any other CP that owns, is owned by or is under common ownership with such a CP. The set of all affiliated CPs is considered as a CP affiliate group. This term is consistent with ''participant family'' as defined in 17 CFR 240.17Ad–22(12).

Model Validation

ICC proposes revisions to the 'model validation' section to note that its Liquidity Risk Management Framework is under the purview of the Model Validation Framework, and subject to initial validations.

Stress Testing Framework

ICC proposes revisions to its Stress Testing Framework to unify the stress testing scenarios with the liquidity stress testing scenarios set forth in the Liquidity Risk Management Framework. ICC operates its stress testing and liquidity stress testing on a unified set of stress testing scenarios and system. As such, revisions to the stress testing scenarios are necessary to ensure scenario unification, following changes to the Liquidity Risk Management Framework. Such changes are consistent with recently issued guidance for certain principles and key considerations in the Committee on Payments and Market Infrastructures-Board of the International Organization of Securities Commissions Principles for Financial Market Infrastructures.[12] The proposed revisions are described in detail as follows.

ICC proposes to introduce Risk Factor specific scenarios for all stress test scenarios. Previously, corporate single names were considered at the sector level (as opposed to the Risk Factor level). This change is reflected throughout the framework.

ICC also proposes to add clarifying language to note that the predefined stress testing scenarios set forth in its Stress Testing Framework are applied to all cleared instruments, and that name-specific scenarios are applied to all sovereign and corporate reference entities.

ICC also proposes revisions to extend ICC's margin risk horizon up to 6-days, to account for the risk associated with clearing Asia Pacific products. This change will apply throughout the framework; the risk horizon is reflected as ''N-day'' where N≥5 is the margin risk horizon or Margin Period of Risk (MPOR). The margin risk horizon is based on the greatest MPOR (rounded up to the nearest integer) for the CDS instruments currently eligible for clearing in order to capture the risk associated with clearing products across multiple time zones (*i.e.* if an instrument is subject to 5.5 day MPOR estimations, then the scenarios will reflect N=6).

ICC also proposes to revise its description of the ''Historically Observed Extreme but Plausible Market Scenarios'' to note that the stress spread changes considered as part of each scenario are extracted from the market history of the most actively traded instrument for the considered Risk Factors.

ICC proposes to revise the ''Hypothetically Constructed (Forward Looking) Extreme but Plausible Market Scenarios'' to ensure consistency with the loss-given default stress scenario set forth in the Liquidity Risk Management Framework, which combines a given historically observed extreme but plausible market scenario with explicit Jump-to-Default events. The proposed revisions specify that there will be up to two reference entities selected for a hypothetical adverse credit event.

ICC proposes to revise the description of the discordant scenarios (*i.e.* scenarios under which selected risk factors move in opposite directions; commonly the behavior deviates from historically observed behavior) in the Stress Testing Framework, in order to reflect the introduction of Risk Factor specific scenarios. The discordant scenarios are designed to reproduce significant discordant market outcomes observed during the considered historical period. ICC creates discordant scenarios for North American corporate single names and indices; European corporate single names and indices; and sovereign reference entities.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act[13] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[14] because ICC believes that the proposed rule changes will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions. ICC's Liquidity Risk Management Framework describes ICC's liquidity resources as well as the methodology for testing the sufficiency of these resources. The various elements set forth in the Liquidity Risk Management Framework, and described above, ensure that ICC has sufficient liquidity resources to effectively measure, monitor and manage its liquidity risk. Further, the Liquidity Risk Management Framework supports ICC's ability to maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios. As such, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)[15] of the Act.

Further, the changes to the Stress Testing Framework to unify the stress testing scenarios with the stress testing scenarios set forth in the Liquidity Risk Management Framework are necessary following recent changes to the Liquidity Risk Management Framework, as ICC operates its stress testing and liquidity stress testing on a unified set of stress testing scenarios and system. ICC's stress testing practices will continue to ensure the adequacy of systemic risk protections. As such, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)[16] of the Act. The proposed changes will also satisfy the requirements of Rule 17Ad–22.[17] The revised stress test scenarios set forth in the Stress Testing Framework will continue to ensure that ICC maintains sufficient financial resources to withstand a default by the Clearing Participant (''CP'') family to which it has the largest exposure in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[18]

B. Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The Liquidity Risk Management Framework and the Stress Testing Framework apply uniformly across all CPs. Therefore, ICC does not believe the proposed rule changes impose any

[12] See CPMI–IOSCO Consultative Report, Resilience and recovery of CCPs: Further guidance on the PFMI, dated August 2016 (*http://www.bis.org/cpmi/publ/d149.pdf*).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22.

[18] 17 CFR 240.17Ad–22(b)(3).

burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change, Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2017–005 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–ICC–2017–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2017–005 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11603 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80824; File No. SR–BX–2017–026]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VI, Section 5

May 31, 2017.

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 24, 2017, 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 Chapter VI, Section 5 (Minimum Increments),[3] to extend through December 31, 2017 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.[4]

Proposed new language is *underlined* and deleted text is in brackets.

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NASDAQ BX Rules

Options Rules

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on [June 30, 2017] *December 31, 2017* or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Chapter and Series refer to rules of the BX Options Market (''BX Options''), unless otherwise noted.

[4] The Penny Pilot was established in June 2012 and extended in 2016. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037); 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR–BX–2016–021) (notice of filing and immediate effectiveness of a proposed rule change relating to extension of the Exchange's Penny Pilot Program and replacement of Penny Pilot Issues that have been delisted); and 79420 (November 29, 2016), 81 FR 87639 (December 5, 2016) (SR–BX–2016–062) (notice of filing and immediate effectiveness of proposed rule change to amend Chapter VI, Section 5 to extend the Penny Pilot Program).

options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following [January 1, 2017] *July 1, 2017.*

(4) No Change.

(b) No Change.

* * * * *

The text of the proposed rule change is also available on the Exchange's website at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5, to extend the Penny Pilot through December 31, 2017 or the date of permanent approval, if earlier,[5] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on June 30, 2017.

The Exchange proposes to extend the time period of the Penny Pilot through December 31, 2017 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2017. The replacement issues will be selected based on trading activity in the previous six months.[6]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] 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, and 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 proposed rule change, which extends the Penny Pilot for an additional six months through December 31, 2017 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2017, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and

[5] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

[6] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site. Penny Pilot replacement issues will be selected based on trading activity in the previous six months, as is the case today. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the July replacement, trading volume from December 1, 2016 through May 31, 2017 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2017–026 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–2017–026. This file number should be included on the subject line if e-mail 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2017–026 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11608 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[10] 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.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, June 8, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amici participation; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: June 1, 2017.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2017–11769 Filed 6–2–17; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80826; File No. SR–GEMX–2017–21]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program To Quote and To Trade Certain Options Classes in Penny Increments

May 31, 2017.

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 25, 2017, Nasdaq GEMX, LLC (''GEMX'' 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 extend a pilot program to quote and to trade certain options classes in penny increments (''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq–100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2017.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2017, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2017. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2016, and ending May 31, 2017). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2017–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[3] *See* Exchange Act Release No. 79741 (January 4, 2017), 82 FR 3034 (January 10, 2017) (SR–ISE Gemini–2016–25).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 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.

should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–GEMX–2017–21 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11610 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80810; File No. SR–NASDAQ–2017–052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5735

May 30, 2017.

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 24, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to correct rule language added by a previous filing[3] that, in part, amended Nasdaq Rule 5735 (Managed Fund Shares).

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, the Commission approved a Nasdaq filing (the ''Initial Filing'') to amend, among other things, the continued listing requirements for exchange-traded products (''ETPs'') in the Nasdaq Rule 5700 Series.[4] Subsequently, the Exchange submitted a filing[5] (the ''Subsequent Filing'') containing a number of housekeeping and conforming changes to the Initial Filing. The proposed amendment makes a correction to language added as part of the Subsequent Filing.

Specifically, the Exchange proposes to correct under the applicability section of Nasdaq Rule 5735(b)(1) (Managed Fund Shares)[6] that any of the statements or representations regarding not just the description of the portfolio, but also of reference assets, among other things, will constitute continued listing requirements for listing of shares. This correction will result in the language mirroring that added by the Subsequent Filing in the initial and continued listing requirements section of Nasdaq Rule 5735[7] as intended.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change to correct Nasdaq Rule 5735(b)(1) to require that any of the statements or representations regarding not just the description of the portfolio, but also of reference assets, will constitute continued listing requirements for listing of shares will provide clarity and accurately reflect the intent of the rule to the benefit of investors and the public interest.

For these reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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, as amended. The Exchange believes that the proposed rule change may enhance competition since it corrects and makes more consistent the applicability of listing requirements for ETPs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The proposal will modify Nasdaq Rule 5735(b)(1) to provide that any of the statements or representations regarding not just the description of the portfolio, but also the description of reference assets, among other things, constitute continued listing requirements for Managed Fund Shares. This aligns the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80708 (May 17, 2017), 82 FR 23690 (May 23, 2017) (SR–NASDAQ–2017–040).

[4] *See* Securities Exchange Act Release No. 79784 (Jan. 12, 2017), 82 FR 6664 (Jan. 19, 2017) (SR–NASDAQ–2016–135).

[5] *Supra* note 3.

[6] *See* Nasdaq Rule 5735(b)(1).

[7] *See* Nasdaq Rule 5735(d)(2)(C)(iv).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

requirements in Nasdaq Rule 5735(b)(1) with the requirements in Nasdaq Rule 5735(d)(2)(C)(iv) [12] and ensures that the listing requirements for Managed Fund Shares are consistent across the Exchange's rules, reducing potential investor confusion. Therefore, the Commission designates the proposed rule change to be operative upon filing.[13]

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.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–052 and should be submitted on or before June 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–11505 Filed 6–5–17; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* Securities Exchange Act Release No. 79784, *supra* note 4.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Commission notes that the changes in the Subsequent Filing become operative on October 1, 2017. *See* Securities Exchange Act Release No. 80708, *supra* note 3, at 23691. Since this filing proposes to modify rule text in the Subsequent Filing, the change proposed herein will also be operative October 1, 2017.

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10023]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Mystical Symbolism: The Salon de la Rose+Croix in Paris, 1892–1897'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that certain objects to be included in the exhibition ''Mystical Symbolism: The Salon de la Rose+Croix in Paris, 1892–1897'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, New York, from on or about June 30, 2017, until on or about October 4, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–11645 Filed 6–5–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10024]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Cristóbal de Villalpando: Mexican Painter of the Baroque'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that certain objects to be included in the exhibition ''Cristóbal de Villalpando: Mexican Painter of the Baroque,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about July 17, 2017, until on or about October 15, 2017, and at possible additional exhibitions or venues yet to

be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–11692 Filed 6–5–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10020]

Issuance of Presidential Permit to the Otay Water District To Construct, Connect, Operate, and Maintain Cross-Border Water Pipeline Facilities for the Importation of Desalinated Seawater at the International Boundary Between the United States and Mexico in San Diego County, California

SUMMARY: The Department of State issued a Presidential permit to the Otay Water District (the District) on May 16, 2017, authorizing the District to construct, connect, operate, and maintain cross-border water pipeline facilities for the importation of desalinated seawater at the international boundary between the United States and Mexico in San Diego County, California. In making this determination, the Department provided public notice of the proposed permit, offered the opportunity for comment, and consulted with other federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: Contact the Office of Mexican Affairs' Border Affairs Unit via email at *WHABorderAffairs@state.gov,* by phone at 202–647–9894, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: The following is the text of the issued permit:

Presidential Permit

Authorizing the Otay Water District To Construct, Connect, Operate, and Maintain Cross-Border Water Pipeline Facilities for the Importation of Desalinated Seawater at the International Boundary Between the United States and Mexico in San Diego Country, California

By virtue of the authority vested in me as the Acting Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs including those authorities under Executive Order 11423, 33 FR 11741 (1968); as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004); and Department of State Delegation of Authority 118–2 of January 26, 2006 and Delegation 415 of January 18, 2017; having considered the environmental effects of the proposed action consistent with the National Environmental Policy Act of 1969, as amended (83 Stat. 852, 42 U.S.C. 4321 *et seq.*), and other statutes relating to environmental concerns; having considered the proposed action consistent with the National Historic Preservation Act of 1966, as amended (80 Stat. 917, 16 U.S.C. 470f *et seq.*); and having requested and received the views of various federal departments, state and local officials, and Indian tribes, and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the Otay Water District (hereinafter referred to as ''permittee'') to construct, connect, operate, and maintain cross-border water pipeline facilities for the importation of desalinated seawater at the international boundary between the United States and Mexico in San Diego County, California.

The term ''facilities'' as used in this permit means the relevant portion of the pipeline and any land, structures, installations, or equipment appurtenant thereto as described in the permittee's November 2013 application for a Presidential permit (the ''Application'').

The term ''U.S. facilities'' as used in this permit means those parts of the facilities in the United States, as described in the Application.

This permit is subject to the following conditions:

Article 1. (1) The U.S. facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefore. The permittee shall make no substantial change in the location of the U.S. facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

(2) The construction, connection, operation, and maintenance of the facilities shall be in all material respects as described in the Application.

Article 2. The standards for, and the manner of, the construction, connection, operation, and maintenance of the U.S. facilities shall be subject to inspection and approval by the representatives of appropriate federal, state, and local agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. The permittee shall comply with all applicable federal, state, and local laws and regulations regarding the connection, construction, operation, and maintenance of the U.S. facilities and with all applicable industrial codes. The permittee shall obtain all requisite permits from the relevant Mexican authorities as well as from the relevant state and local government entities and relevant federal agencies.

Article 4. All construction, connection, operation, and maintenance of the U.S. facilities under this permit shall be subject to the limitations, terms, and conditions issued by any competent agency of the U.S. Government, including but not limited to the Department of Homeland Security (DHS) and the U.S. Section of the International Boundary and Water Commission (USIBWC). The permittee shall continue the operations hereby authorized and conduct maintenance in accordance with such limitations, terms, and conditions. Such limitations, terms, and conditions could address, for example, environmental protection and mitigation measures, safety requirements, export or import and customs regulations, measurement capabilities and procedures, requirements pertaining to the pipeline's capacity, and other pipeline regulations. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized by any competent U.S. government agency in exact accordance with such limitations, terms, and conditions.

Article 5. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the

Secretary of State or the Secretary's delegate, the U.S. facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove, or to take such other action with respect to, this portion of the U.S. facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed or other action taken, at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession, removal, or action.

Article 6. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the U.S. facilities or parts thereof; to retain possession, management, or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such U.S. facilities upon the basis of a reasonable profit in normal conditions and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 7. Any transfer of ownership or control of the U.S. facilities or any part thereof shall be immediately notified in writing to the U.S. Department of State for approval, including identification of the transferee. In the event of such transfer of ownership or control, this permit shall remain in force and the U.S. facilities shall be subject to all the conditions, permissions, and requirements of this permit and any amendments thereof.

Article 8. (1) The permittee is responsible for acquiring such right-of-way grants or easements, permits, and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of construction, connection, operation, or maintenance of the facilities.

(3) The permittee shall maintain the U.S. facilities and every part thereof in a condition of good repair for their safe operation.

(4) The permittee shall obtain a license from the USIBWC before commencing construction.

(5) The permittee shall obtain an easement from DHS for any portion of the pipeline that crosses over or under property in which the U.S. Customs and Border Protection owns an interest.

(6) The permittee shall obtain a permit from the California Environmental Protection Agency, State Water Resources Control Board, Division of Drinking Water.

Article 9. The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the operation and maintenance of the U.S. facilities, including those mitigation measures set forth in the Final Environmental Impact Report/Environmental Impact Statement dated August 2016 and any additional measures that may be required as result of any reevaluation of the foregoing or in the associated terms of the Biological Opinion to be issued by the U.S. Fish and Wildlife Service.

Article 10. The permittee shall not begin construction until it has been informed that the Government of the United States and the Government of Mexico have exchanged diplomatic notes confirming that both governments authorized the commencement of construction.

Article 11. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun and again at such time as construction is completed, interrupted, or discontinued.

Article 12. The permittee shall file with the appropriate agencies of the U.S. government such statements or reports under oath with respect to the U.S. facilities, and/or the permittee's actions in connection therewith, as are now or may hereafter be required under any laws or regulations of the U.S. government or its agencies.

Article 13. This permit shall expire five years from the date of issuance in the event that the permittee has not commenced construction of the facilities by that deadline.

In witness whereof, I, Judith G. Garber, Acting Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs, have hereunto set my hand this 16th day of May, 2017 in the City of Washington, District of Columbia.

Judith G. Garber,

Acting Assistant Secretary for Oceans and International Environmental And Scientific Affairs.

[FR Doc. 2017–11675 Filed 6–5–17; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Colorado Springs Airport, Colorado Springs, Colorado.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Colorado Springs Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before July 6, 2017.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. John P. Bauer, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Troy Stover, Colorado Springs Airport, Colorado Springs, Colorado, at the following address: Mr. Troy Stover, Colorado Springs Airport, 7770 Milton E. Proby Parkway, Suite 50, Colorado Springs, Colorado 80916.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Miller, Colorado Engineer/Compliance Specialist, Federal Aviation Administration, Northwest Mountain Region, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Colorado Springs Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On May 16, 2017, the FAA determined that the request to release

property at the Colorado Springs Airport submitted by the Colorado Springs Airport meets the procedural requirements of the Federal Aviation Administration.

The following is a brief overview of the request:

The Colorado Springs Airport is proposing the release from the terms, conditions, reservations, and restrictions on approximately 27.31 acres of federally obligated land at the Colorado Springs Airport. The said parcel is a portion of a larger 110 acre available land mass north of Stewart Road and east of Powers Boulevard. The proposed release would allow for construction of a cargo facility which is consistent with the permitted land use. The airport property being proposed for release is bisected by a roadway and Sand Creek drainage system and does not have access to the airfield, and is currently undeveloped and is not planned or situated for aeronautical activity. The property will be sold at fair market value and the sponsor will reinvest the revenue into the airport. The property release conveyance will include appropriate continuing right of flight and continuing restriction clauses that will prohibit any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the airport, or that interferes with air navigation and communications facilities serving the airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at the Colorado Springs Airport.

Issued in Denver, Colorado on May 16, 2017.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2017–11584 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at Albany International Airport, Albany, NY.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comment.

SUMMARY: The FAA is requesting public comment for a land release and sale of 11.972 acres of federally obligated airport property at Albany International Airport, Albany, NY, to accommodate the construction of a new highway access ramp connecting Albany Shaker Road to Interstate 87. This acreage was originally purchased with federal financial assistance through the AIP program under Grant Agreements 3–36–0001–062–1999, 3–36–0001–092–2007, and 3–36–0001–105–2009. In accordance with federal regulations, this notice is required to be published in the **Federal Register** 30 days before releasing the grant assurances that require the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before July 6, 2017.

ADDRESSES: Comments on this application may be mailed or delivered to the following address: John O'Donnell, Chief Executive Officer, Albany International Airport, Albany County Airport Authority, Administration Building, Suite 200, Albany, NY 12211–1057, (518) 242–2222.

and at the FAA New York Airports District Office: Evelyn Martinez, Manager, New York Airports District Office, 1 Aviation Plaza, Jamaica, NY 11434, (718) 995–5771.

FOR FURTHER INFORMATION CONTACT: Ryan Allen, Community Planner, New York Airports District Office, 1 Aviation Plaza, Jamaica, NY 11434. (718) 995–5677.

The land release request for the sale and disposal of 11.972 acres of federally obligated airport property at Albany International Airport, Albany, NY may be reviewed in person at the New York Airports District Office located at 159–30 Rockaway Blvd., Suite 111, Jamaica, NY 11434.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the request:

The Albany County Airport Authority has submitted a land release request seeking FAA approval for the sale and disposal of approximately 11.972 acres of federally obligated airport property to the New York Department of Transportation (NYSDOT) for the purpose of accommodating the construction of a new highway access ramp connecting Albany Shaker Road to Interstate 87, also known as the Adirondack Northway Exit 4 Project. The project will include new highway construction with access improvements, new bridge construction associated with the access improvements, and the replacement of the existing Northway bridges over Albany Shaker Road.

The parcels for this project are known as Tax Lots 30.–5–1, 2, 3, 4, & 9 in Colonie, NY, and will be subdivided to account for a total of 11.972 acres to be released and sold at Fair Market Value (FMV) as determined by a certified appraisal report. The proposed subdivision and sale will subsequently result in the reduction in economic value of a total of 6.420 acres of existing airport property adjacent to the 11.972 acres being released, whereby these 6.420 acres will become landlocked and inaccessible. Due to the reduction in value of these 6.420 acres as a result of the subdivision and sale of the subject parcels, the airport will also be compensated for the reduction in value of these ''uneconomic remnants'' at FMV. In addition, as a condition of the land release, the airport and prospective buyer have agreed to include an access easement across the road right-of-way to allow for continued access to the aforementioned 6.420 acres by the airport sponsor.

The 11.972 acres of land to be released was originally purchased with federal financial assistance through the AIP program under Grant Agreements 3–36–0001–062–1999, 3–36–0001–092–2007, and 3–36–0001–105–2009. Therefore, the portion of the proceeds of the sale of this acreage, which is proportionate to the United States' share of the cost of acquisition of such land, will be used consistent with the requirements of 49 U.S.C. 47107(c). The remaining portion of the proceeds of the sale, is considered airport revenue, and will be used in accordance with 49 U.S.C. 47107(b) and the FAA's Policy and Procedures Concerning the Use of Airport Revenue published in the **Federal Register** on February 16, 1999.

The 11.972 acres to be released are part of previous purchases totaling 189.65 for reasons associated with Runway Protection Zone (RPZ) protection, obstruction control, and noise compatibility in line with a part 150 noise study. The subject area to be released, however, is not located within the RPZ, will not result in any obstructions to part 77 surfaces, and has not been identified as needed for current or future airport development in the current Airport Master Plan or ALP. Furthermore, the proposed use as a highway interchange is considered to be a compatible land use as defined by the part 150 study.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment. All comments

will be considered by the FAA to the extent practicable.

Issued in Jamaica, New York.

Sukhbir Gill,

Acting Manager, New York Airports District Office.

[FR Doc. 2017–11585 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0389; FMCSA–2012–0294; FMCSA–2013–0109; FMCSA–2013–0442]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 11 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On October 14, 2016, FMCSA published a notice announcing its decision to renew exemptions for 11 individuals from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (81 FR 71181). The public comment period ended on November 14, 2016, and no comments were received on January 9, 2017, FMCSA published a second notice announcing its decision to renew exemptions for the same 11 individuals from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (81 FR 71181). The public comment period ended on February 8, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: Section 391.41(b)(8), paragraphs 3, 4, and 5.]

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 11 renewal exemption applications and no comments received, FMCSA confirms its' decision to exempt the following drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8), subject to the requirements cited above.

As of April 8, 2016, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (81 FR 71181): Jeffrey Ballweg (WI); Michael Ranalli (PA); Lonnie Reicker (IL); and Jay Whitehead (NY). These drivers were included in FMCSA–2011–0389; and FMCSA–2012–0294; FMCSA–2013–0109. The exemptions were effective on April 8, 2016, and will expire on April 8, 2018.

As of April 23, 2016, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (81 FR 71181):

Charles Blood (NY)
Raymond Lobo (NJ)
Randy Pinto (PA)
Brent Robinson (NC)
Douglas Teigland (MN)
Joseph Thomas (MD)
James Spece (PA)

These drivers were included in FMCSA–2013–0442. The exemptions were effective on April 23, 2016, and will expire on April 23, 2018.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11649 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0035]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 42 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 6, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0035 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 42 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Shayne T. Anthony

Mr. Anthony, 38, has had ITDM since 2006. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Anthony understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anthony meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Steven S. Arrowood

Mr. Arrowood, 39, has had ITDM since 2001. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Arrowood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arrowood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Melyssia V. Auwerda

Ms. Auwerda, 28, has had ITDM since 2000. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Auwerda understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Auwerda meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Colorado.

Jerome Barfield

Mr. Barfield, 52, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barfield understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barfield meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Grover C. Binkley

Mr. Binkley, 49, has had ITDM since 2007. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Binkley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Binkley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Tennessee.

Vincent Bongiovanni

Mr. Bongiovanni, 47, has had ITDM since 1992. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bongiovanni understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bongiovanni meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Massachusetts.

Robert H. Branyon

Mr. Branyon, 63, has had ITDM since 2003. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Branyon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Branyon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from South Carolina.

Gary L. Brown

Mr. Brown, 61, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Douglas R. Carr

Mr. Carr, 64, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Carr understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Gary F. Cartwright

Mr. Cartwright, 65, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cartwright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cartwright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Jeffrey R. Cline

Mr. Cline, 52, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cline understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cline meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Cheryl L. Coffman

Ms. Coffman, 50, has had ITDM since 2008. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Coffman understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Coffman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Jay B. Cole

Mr. Cole, 32, has had ITDM since 2016. His endocrinologist examined him

in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cole understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cole meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Nicholas B. Cooksey

Mr. Cooksey, 23, has had ITDM since 1999. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cooksey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cooksey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Michael Csaplik

Mr. Csaplik, 62, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Csaplik understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Csaplik meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Karl J. Dence

Mr. Dence, 48, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dence understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dence meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

James R. Diem

Mr. Diem, 65, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Diem understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Diem meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Mark W. Eaves

Mr. Eaves, 49, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eaves understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eaves meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Franklin J. Economy

Mr. Economy, 62, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Economy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Economy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Ervin L. Elfman, Jr.

Mr. Elfman, 79, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Elfman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Elfman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Oliver L. Grigsby

Mr. Grigsby, 59, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Grigsby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grigsby meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Jason Hargrove

Mr. Hargrove, 51, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hargrove understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hargrove meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from North Carolina.

Kevin J. Hart

Mr. Hart, 63, has had ITDM since 1997. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Thomas R. Holland

Mr. Holland, 24, has had ITDM since 1995. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holland understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Martin J. Jones

Mr. Jones, 52, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Robert A. Kurley

Mr. Kurley, 47, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kurley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kurley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Robert I. Leach

Mr. Leach, 65, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leach understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Mark A. Long

Mr. Long, 56, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Long understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Long meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Micheal D. Lucas

Mr. Lucas, 66, has had ITDM since 1998. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lucas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lucas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Dagmar L. Osoria Castaneda

Mr. Osorio Castaneda, 31, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies

that Mr. Osorio Castaneda understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Osorio Castaneda meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Roxanne Pierce

Ms. Pierce, 62, has had ITDM since 1997. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Pierce understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Pierce meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from North Dakota.

Garry B. Reynolds, Jr.

Mr. Reynolds, 52, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reynolds understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reynolds meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

Jason R. Roberts

Mr. Roberts, 38, has had ITDM since 1994. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roberts understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roberts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D CDL from Kentucky.

Ronald H. Shepherd

Mr. Shepherd, 41, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shepherd understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shepherd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Randall D. Shiflett

Mr. Shiflett, 52, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shiflett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shiflett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Teddy D. Smith

Mr. Smith, 50, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Jonathan D. Snudden, Jr.

Mr. Snudden, 48, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Snudden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Snudden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

Maleika A. Swain-Ogilvie

Ms. Swain-Ogilvie, 38, has had ITDM since 2016. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Swain-Ogilvie understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Swain-Ogilvie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Pennsylvania.

Ashley D. Waite

Mr. Waite, 64, has had ITDM since 2007. His endocrinologist examined him

in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Waite understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waite meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Vermont.

Delbert A. Walker

Mr. Walker, 64, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Walker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Terry L. Watkins

Mr. Watkins, 49, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Watkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Timothy Zulla

Mr. Zulla, 54, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zulla understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zulla meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0035 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0035 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11640 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; American Pyrotechnics Assoc. (APA) Application for Exemption From the 14-Hour Rule; Request To Add New Member to Current APA Exemption; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for an extension of exemption; request for comments; correction.

SUMMARY: The FMCSA published a document in the **Federal Register** of May 15, 2017 (82 FR 22375), concerning a request for comments on the American Pyrotechnics Association's request for a member company, Pyro Shows of Alabama, Incorporated, to be included in an existing exemption. The document referenced June 14, 2017, in the **DATES** section but did not specify the significance of that date, which should have been the end of the comment period.

DATES: Comments must be received on or before June 14, 2017.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Correction

1. In the **Federal Register** of May 15, 2017 (82 FR 22375), in FR Doc. 2017–09735, on page 22376, in the first column, correct the **DATES** paragraph to read:

DATES: Comments must be received on or before June 14, 2017.

Issued on: May 30, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11650 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0109; FMCSA–2013–0444]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to renew exemptions for 10 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On October 20, 2016, FMCSA published a notice announcing its decision to renew exemptions for 10 individuals from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (81 FR 72663). The public comment period ended on November 21, 2016, and one comment was received on January 12, 2017, FMCSA published a second notice announcing its decision to renew exemptions for the same 10 individuals from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (81 FR 72663). The public comment period ended on February 13, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

III. Discussion of Comments

In response to the October 20, 2016, notice, FMCSA received one comment in support of Mr. Troff receiving an exemption. No comments were received in response to the January 12, 2017 notice.

IV. Conclusion

Based upon its evaluation of the 10 renewal exemption applications and comments received, FMCSA confirms its' decision to exempt the following drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8), subject to the requirements cited above.

As of June 9, 2016, David Crowe (VA), has satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (81 FR 72663). This driver was included in FMCSA–2013–0109. This exemption was effective on June 9, 2016, and will expire on June 9, 2018.

As of June 24, 2016, the following 9 individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) from driving CMVs in interstate commerce (81 FR 72663):

Travis Arend (VA)

Heath Crowe (LA)

Richard Degnan (AZ)

Peter DellaRocco (PA)

Domenick Panfie (NJ)

Scott Reaves (TX)

Milton Tatham (NV)

Thomas Tincher (VA)

Duane Troff (MN)

These drivers were included in FMCSA–2013–0444. These exemptions were effective June 24, 2016, and will expire June 24, 2018.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11651 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0107]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for four individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were effective on November 6, 2015. The exemptions expire on November 6, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On October 14, 2016, FMCSA published a notice announcing its decision to renew exemptions for four individuals from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (81 FR 71164). The public comment period ended on November 14, 2016, and no comments were received on January 9, 2017, FMCSA published a second notice announcing its decision to renew exemptions for the same four individuals from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (81 FR 71164). The public comment period ended on February 8, 2017, and one comment was received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: section 391.41(b)(8), paragraphs 3, 4, and 5.]

III. Discussion of Comments

FMCSA received no comments in response to the October 14, 2016, notice. FMCSA received one comment in response to the January 9, 2017, notice. This commenter expressed concern for allowing individuals with epilepsy to drive even when taking anti-seizure medication. FMCSA evaluated the medical records of all four applicants

and determined that granting these exemptions would achieve an equivalent or greater level of safety than would be achieved without the exemption.

IV. Conclusion

Based upon its evaluation of the four renewal exemption applications FMCSA confirms its decision to exempt the following drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41(b)(8), subject to the requirements cited above: Christopher Bird (OH); Edward Nissenbaum (PA); Stephen Stawinsky (PA); and George Webb (MA).

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11652 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0355; FMCSA–2010–0386; FMCSA–2012–0347; FMCSA–2012–0348; FMCSA–2014–0310; FMCSA–2014–0311]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions of 130 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http//www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On December 29, 2016, FMCSA published a notice announcing its decision to renew exemptions for 130 individuals from the insulin-treated diabetes mellitus prohibition in 49 CFR 391.41(b)(3) to operate a CMV in interstate commerce and requested comments from the public (81 FR 96183). The public comment period ended on January 30, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 130 renewal exemption applications and that no comments were received, FMCSA confirms its' decision to exempt the following drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce in 49 CFR 391.41(b)(3):

As of January 9, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 65931; 78 FR 1926):

Thomas L. Graber (PA)
Jeremiah S. Johnson (ND)
Henry P. Musgrove, Jr. (WA)
Henry W. Rutschow (OH)
Michael L. Sabin (IL)
Patrick E. Snyder (NY)
Odell Williams (NC)

The drivers were included in docket No. FMCSA–2012–0347. Their exemptions are effective as of January 9, 2017, and will expire on January 9, 2019.

As of January 10, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (75 FR 69734; 76 FR 1495):

Jerry A. Barber (NY)
Julie A. Brandvold (ND)
Terry D. Cunningham (OH)
Dean A. Dalessandro (MA)
Albert H. Feldt (MO)
Christopher J. Grause (SD)
Shannon A. Griffin (MO)
Mathew M. Rollins (SC)
James H. Smith (DC)

The drivers were included in docket No. FMCSA–2010–0355. Their exemptions are effective as of January 10, 2017, and will expire on January 10, 2019.

As of January 15, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 40 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 74159; 80 FR 8926):

Eric D. Ambler (WI)
Clay B. Anderson (IL)
Gregory C. Bartley (PA)
Aaron M. Batts (NC)
Nathan R. Batzel (MN)
Michael R. Bell (MD)
Jerry A. Cox, Sr. (LA)
Lloyd F. Cuckow (CO)
Kenneth B. Dennard (GA)
Eric Q. Dickerson (IN)
James P. Dreifuerst (WI)
Domenic R. Folino (PA)
Howard M. Hammel (NJ)
Derrick D. Harris (IL)
Kevin R. Johnson (MI)
David J. Long (PA)
David P. Magee (MO)
Gary F. Marson (WI)
James A. Meridith (MI)
Richard A. Moore (PA)
Keith B. Muehler (ND)
John K. Murray (NY)
John D. Pede, Jr. (PA)
John F. Prophet (FL)
Dominic F. Quartullo (WI)
Michael E. Reed (IA)
Carlos B. Rodriguez (NY)
David J. Sierra (NJ)
Roger E. Smith (IA)
Terrell W. Smith (PA)
Anthony L. Spratto (WI)
Timothy R. Stephens (KS)
Howard C. Stines (TN)
Christopher E. Swanson (CA)
Diana C. Tabala (NY)
Brewster E. Thurston (VT)
Phillip J. Ulmer (LA)
Charles A. Walker (IL)
John D. Weaver (WY)
Leroy D. Yost (IA)

The drivers were included in docket No. FMCSA–2014–0310. Their exemptions are effective as of January 15, 2017, and will expire on January 15, 2019.

As of January 25, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 70530; 78 FR 5559):

Randle A. Badertscher (WY)
Jerol G. Fox (DE)
Michael S. Freeman (OR)
Harold D. Grimes (MI)
Douglas W. Hunderman (MI)
Robert L. Johnson, Jr. (VA)
George R. Miller III (PA)
Ronald G. Monroe (IN)
Israel Ramos (NY)
Jed Ramsey (ID)
Raymond E. Richardson (MD)
Craig W. Schafer (DE)
Stephen L. Schug (FL)
Shawn M. Seeley (CT)
Mark S. Shepherd (MA)
L. Everett Stamper (IN)

The drivers were included in docket No. FMCSA–2012–0348. Their exemptions are effective as of January 25, 2017, and will expire on January 25, 2019.

As of January 28, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (75 FR 77947; 76 FR 5243):

James T. Bezold (KY)
Allen C. Cornelius, Jr. (DE)
Eugene M. Johnson (NY)
Michael A. McHenry (IN)
Gregory S. Myers (PA)
Richard D. Peterson, Jr. (MN)
Rudolph Q. Redd (IL)
Chad A. Sanders (IN)
Mark A. Sawyer (IN)

The drivers were included in docket No. FMCSA–2012–0386. Their exemptions are effective as of January 28, 2017, and will expire on January 28, 2019.

As of January 31, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 49 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 78938; 80 FR 12545):

Joseph L. Allen (TX)
Wayne A. Aukes (MN)
Freddie W. Bermudez, Jr. (IL)
Darrell K. Blanton (NC)
Richard A. Boor (VA)
Stephen R. Brown (NH)
Kenneth E. Chastain (TN)
Jeffery C. Colbert (AR)
Kenny L. Dickerson (GA)
James M. DiClaudio (NJ)
Steven A. Dion (NY)
Dean R. Duquette (ME)
Joseph J. Eckstrom (NY)
Morgan D. Hale, Jr. (KY)
James J. Hartman (SD)
Dale H. Hintz (WI)
Benjamin D. Horton (VA)
Danny R. Jackson, Jr. (OR)
Brian C. Jagdman (MD)
Terry J. Johnson (MD)
Robert L. Johnson, Jr. (OK)
Michael W. Jones (NJ)
Carl J. Kern, Jr. (PA)
Monte J. Lakosky (MI)
Aaron J. Larson (WI)
Jeffrey G. Lawrence (AR)
Leo D. Maggioli (MA)
Ryan M. McClatchey (TN)
Carl A. Mears, Jr. (VT)
Robert P. Miller (WI)
Nicholas M. Palocy (VT)
John D. Patterson (OH)
Michael W. Perez (OH)
Jerry Platero (NM)
Darrell K. Rau (IA)
Andrew B. Renninger (PA)
Ryan T. Rock (ID)
Wilfredo Rodriguez (NY)
Mark A. Santana (PA)
Donald E. Scovil (NH)
David E. Shinen (CA)
Patrick A. Shryock (AR)
Joshua C. Thompson (AZ)
Jeffrey D. Thomson (WI)
Marshall L. Wainwright (IL)
Glenn P. Whitehouse (PA)
Jennifer R. Williams (PA)
John E. Yates (IN)
Jeffrey S. Zimmer (NH)

The drivers were included in docket No. FMCSA–2012–0386. Their exemptions are effective as of January 31, 2017, and will expire on January 31, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11641 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Daimler Trucks North America's (Daimler) application for an exemption to allow a Daimler employee to drive commercial motor vehicles (CMV) in the United States without having a commercial driver's license (CDL) issued by one of the States. The driver, Martin Zeilinger, will test-drive

Daimler vehicles on U.S. roads to better understand product requirements for these vehicles in ''real world'' environments and verify results. He holds a valid German commercial license but lacks the U.S. residency necessary to obtain a CDL issued by one of the States. FMCSA believes that the process for obtaining a German commercial license is comparable to or as effective as the U.S. CDL requirements and ensures that this driver will likely achieve a level of safety that is equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This exemption is effective June 6, 2017 and expires June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2012–0032'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Daimler Application for Exemption

Daimler has applied for an exemption renewal for one of its engineers from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. This driver, Martin Zeilinger, holds a valid German commercial license but is unable to obtain a CDL in any of the U.S. States due to residency requirements. A copy of the application is in Docket No. FMCSA–2012–0032.

FMCSA initially granted an exemption to Mr. Zeilinger on March 27, 2015 (80 FR 16511). This exemption was effective March 27, 2015, and expired March 27, 2017. Detailed information about the qualifications and experience of Mr. Zeilinger was provided by Daimler in its original application, a copy of which is in the docket.

The exemption renewal would allow Mr. Zeilinger to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to develop improved safety and emission technologies. According to Daimler, Mr. Zeilinger will typically drive for no more than 6 hours per day for 2 consecutive days, and 10 percent of the test driving will be on two-lane State highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for a total of 400 miles during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled. Daimler requests that the exemption cover the maximum allowable duration of 5 years.

Daimler has explained in prior exemption requests that the German knowledge and skills tests and training program ensure that Daimler's drivers operating under the exemption will achieve a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL.

IV. Method To Ensure an Equivalent or Greater Level of Safety

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. Since 2012, FMCSA has granted Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410); July 12, 2016 (81 FR 45217); July 25, 2016 (81 FR 48496)].

V. Public Comments

On March 22, 2017, FMCSA published notice of this application and requested public comments (82 FR 14791). One respondent opposed the requested exemption. Mr. Michael Millard wrote, ''I feel five years is sufficient for Martin Zeilinger to obtain a US CDL. Please deny Daimler Trucks North America's request.''

VI. FMCSA Decision

Based upon the merits of this application, including Mr. Zeilinger's extensive driving experience and safety record, FMCSA has concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

VII. Terms and Conditions for the Exemption

FMCSA grants Daimler and Martin Zeilinger an exemption from the CDL requirement in 49 CFR 383.23 to allow Mr. Zeilinger to drive CMVs in this country without a U.S. State-issued CDL, subject to the following terms and conditions: (1) The driver and carrier must comply with all other applicable provisions of the FMCSRs (49 CFR parts 350–399); (2) the driver must be in possession of the exemption document and a valid German commercial license; (3) the driver must be employed by and operate the CMV within the scope of his duties for Daimler; (4) at all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled; (5) Daimler must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving this driver; and (6) Daimler must notify FMCSA in writing if this driver is

convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) Mr. Zeilinger fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: May 26, 2017.

Daphne Y. Jefferson,

Deputy Administrator.

[FR Doc. 2017–11647 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27387; FMCSA–2008–0137; FMCSA–2009–0122; FMCSA–2011–0143; FMCSA–2013–0018; FMCSA–2015–0060; FMCSA–2015–0061]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions of 134 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. FMCSA has statutory authority to exempt individuals from this rule if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before July 6, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA–2007–27387; FMCSA–2008–0137; FMCSA–2009–0122; FMCSA–2011–0143; FMCSA–2013–0018; FMCSA–2015–0060; FMCSA–2015–0061 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 134 individuals listed in this notice have recently become eligible for a renewed exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. The drivers remain in good standing with the Agency, have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

II. Exemption Decision

This notice addresses 134 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. These 134 drivers remain in good standing with the Agency, have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. Therefore, FMCSA has decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are renewed subject to the following conditions: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual submit an annual ophthalmologist's or optometrist's report; and (4) that each

individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following groups of drivers received renewed exemptions in the month of July and are discussed below.

As of July 2, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 24 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (72 FR 27625; 72 FR 36101; 78 FR 26419; 78 FR 39825):

Darrell L. Allen (MO)
Luis A. Alvarez (MD)
Jeffery C. Badberg (NE)
Kevin W. Bender (NY)
Ricky N. Blankenship (UT)
Ronnie T. Bledsoe (NC)
Kevin E. Blythe (AR)
Clayton J. Bragg (IN)
Jessie W. Burnett (KS)
Cary W. Chase (CO)
Peggy A. Colbert (GA)
Ernest R. Copeland (PA)
Jerry L. Grimit (IA)
Robert J. Guilford (NY)
Lucas C. Hansen (IA)
Bruce K. Harris (TX)
Michael G. Lorelli (NY)
James M. McClarnon (RI)
Franklin C. Perrin (IA)
Douglas F. Reinke (WI)
Timothy S. Seitz (IN)
Daniel L. Smith (NE)
Randall J. Stoller (IL)
Jeffrey A. Withers (MI)

The drivers were included in one of the following docket Nos: FMCSA–2007–27387; FMCSA–2013–0018. Their exemptions are effective as of July 2, 2017, and will expire on July 2, 2019.

As of July 7, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 33 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 31949; 80 FR 49299):

Craig S. Barton (UT)
Kevin H. Bennerson (NY)
Eugene Butler (AR)
Allen D. Clise (MD)
John W. Dillard (TX)
Derek P. Elkins (AZ)
Joshua J. Ellett (IN)
Raymond C. Erschen (PA)
Dominic C. Frisina (PA)
David D. Gambill (NC)
Alan G. Gladhill (MD)
Richard A. Hall (IL)
Craig L. Jackson (WY)
Wayne A. Jadezuk (NY)
Lee L. Kropp (WI)
David E. Lawton (MA)
Babe A. Lisai (NY)
Adrian Martinez-Alba (TX)
Daniel Mendolia (NY)
Timothy W. Olden (NJ)
John Palermo (NJ)
John N. Peterson (WI)
Robert L. Potter, Jr. (NH)
Todd M. Raether (NE)
Michael A. Ramsey (CT)
Peter B. Rzadkowski, Jr. (IL)
Michael A. Scavotto (MA)
Steven J. Schmitt (MN)
Douglas J. Smith (NY)
Carmen M. Stellitano (PA)
Andy L. Strommenger (CO)
Robert T. Warriner (NJ)
Ellis E. Wilkins (MA)

The drivers were included in Docket No. FMCSA–2015–0060. Their exemptions are effective as of July 7, 2017, and will expire on July 7, 2019.

As of July 23, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 33 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 35705; 80 FR 48393):

Daniel E. Benes (WI)
William E. Blake (TX)
Thomas M. Burns (NJ)
George W. Cahall (DE)
John T. Curry (TN)
Christopher A. DiCioccio (CT)
Johnny L. Emory (KS)
Ike Gibbs (CA)
Juan Gomez, Jr. (IA)
George A. Gross (NY)
Grover D. Johnson (NY)
Francis D. Judd (MA)
George S. Kean (NH)
Yehuda Lauber (NY)
Kyle A. Mininger (AL)
John T. Murchison, Jr. (TN)
Axel J.M. Murphy (MN)
Charles M. Naylis (PA)
Craig J. Nelson (IL)
Richard A. Nigro (NJ)
Thomas S. O'Brien (TX)
Paul T. Ozbun (OK)
Modesto F. Pedote (NY)
David M. Pomeroy (IA)
Matthew C. Preston (KY)
Anthony A. Rachuy (MN)
Dwight B. Richardson (OK)
James C. Rocco (NJ)
Patrick J. Severance (NY)
Billy L. Wagner (IL)
Steven L. Wear (ND)
James T. Young (MI)
David J. Zelhart (IL)

The drivers were included in docket No. FMCSA–2015–0061. Their exemptions are effective as of July 23, 2017, and will expire on July 23, 2019.

As of July 26, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 32012; 76 FR 44650):

Teddy L. Beach (ND)
Franklin L. Bell (NE)
Jeffrey F. Borelli (OH)
Dale E. Burke (WA)
Boyd L. Croshaw (UT)
Derek Haagensen (MN)
Todd J. Smith (NY)
Andrew C. Winsberg (WA)
Nathan E. Woodin (IL)
Vicky A. Yernesek (WI)

The drivers were included in docket No. FMCSA–2011–0143. Their exemptions are effective as of July 26, 2017, and will expire on July 26, 2019.

As of July 28, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 34 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (73 FR 33144; 73 FR 43817; 74 FR 26467; 74 FR 37293):

Jeromy B. Birchard (MN)
Bradley M. Brown (TX)
Robert F. Browne III (NH)
William M. Camp (GA)
Robert F. Carter (IN)
Scott A. Cary (NC)
Eugene W. Clark, Jr. (WI)
William D. Cornwell III (OH)
Adam F. Demeter (NY)
Brian P. Dionne (NH)
Richard C. Dunn (CT)
Donald K. Ennis (NC)
Larry A. Fritz (PA)
Jerret L. Gerber (WI)
Alan L. Johnson (WA)
Richard B. Lorimer (MO)
Lester J. Manis (MD)
Troy A. Martinson (WI)
Richard L. Miller (OH)
Jerome A. Mjolsness (MN)
Richard Murphy (NH)
Edward F. Murray (NY)
Nicholas W. Pomnitz (NJ)
Clayton M. Reynolds (WA)
Brandon M. Ross (ND)
Jeffrey S. SaintVincent (CA)
Patrick D. Schiller (MI)

Bruce D. Schmoyer (PA)
Joseph E. Sobiech (WI)
James L. Swedenburg (MN)
Gary A. Sweeney (NY)
Lawrence M. Tanner (NV)
Robert D. Tarkington (AK)
Joshua C. Webb (AR)

The drivers were included in one of the following docket Nos: FMCSA–2008–0137; FMCSA–2009–0122. Their exemptions are effective as of July 28, 2017, and will expire on July 28, 2019.

Each of the 134 drivers in the aforementioned groups qualifies for a renewal of the exemption. They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of the 134 drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption. The drivers were included in docket numbers FMCSA–2007–27387; FMCSA–2008–0137; FMCSA–2009–0122; FMCSA–2011–0143; FMCSA–2013–0018; FMCSA–2015–0060; FMCSA–2015–0061.

IV. Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 6, 2017.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 134 individuals from rule prohibiting persons with ITDM from operating CMVs in interstate commerce in 49 CFR 391.41(b)(3). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the medical condition of each applicant for an exemption from rule prohibiting persons with ITDM from operating CMVs in interstate commerce. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

V. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2007–27387; FMCSA–2008–0137; FMCSA–2009–0122; FMCSA–2011–0143; FMCSA–2013–0018; FMCSA–2015–0060; FMCSA–2015–0061 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

VI. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2007–27387; FMCSA–2008–0137; FMCSA–2009–0122; FMCSA–2011–0143; FMCSA–2013–0018; FMCSA–2015–0060; FMCSA–2015–0061 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11637 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0014]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 21 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted May 13, 2017. The exemptions expire on May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 12, 2017, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (82 FR 17736). That notice listed 21 applicants' case histories. The 21 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 21 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 21 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, central artery occlusion, complete loss of vision, corneal laceration, epiretinal membrane, glaucoma, hypertropia, macular scar, prosthetic eye, and retinal detachment. In most cases, their eye conditions were not recently developed. Fourteen of the applicants were either born with their vision impairments or have had them since childhood.

The 7 individuals that sustained their vision conditions as adults have had it for a range of 4 to 16 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 21 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 55 years. In the past three years, no drivers were involved in crashes and no drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 12, 2017 notice (82 FR 17736).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression

Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 21 applicants, no drivers were involved in crashes and no drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 21 applicants listed in the notice of April 12, 2017 (82 FR 17736).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 21 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time oaf the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received four comments in this proceeding. Michael Millard, Mark Skubik, and Misty Pannu all stated that they are against granting the exemptions, citing safety concerns. As stated previously in this notice, FMCSA evaluated each applicant based on their driving histories and medical reports related to their vision deficiencies and have determined that granting the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Robert Bucholz stated he would like to see the results of a study aiming to determine if monocular drivers have higher accident rates, and that this information should be disclosed in the request for comments. An overview of the study that provides justification for granting the vision exemptions is available in section IV of this document.

IV. Conclusion

Based upon its evaluation of the 21 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10):

Andrew R. Cook (VT)
Kevin M. Finn (NY)
David R. Ford (OH)
Douglas P. Fossum (SD)
Timothy M. Good (MI)
John R. Harper (KS)
George H. Keppol, Jr. (WA)
Curtis L. Lamb (KS)
Jeffery D. Lynch (TX)
Kenton D. McCullough (VA)
Charles W. Ohman (IA)
Gary A. Parece (MA)
Everardo G. Plascencia (IL)
Eric D. Polhmann (MN)
Johnny W. Ray (KY)
Steven D. Scharber (MN)
Don Smith (TX)
Renaldo J. Stannard (DC)
John T. Switzer (MS)
Steven A. Thompson (WA)
Edward A. Ziehlke (WI)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11643 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0037]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 29 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 6, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–

2017–0037 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Tyler J. Bren

Mr. Bren, 21, has had ITDM since 2005. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bren understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bren meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

Charlie H. Brown, Jr.

Mr. Brown, 40, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Georgia.

Ajax A. Castro

Mr. Castro, 54, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Castro understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Castro meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Robert J. Conklin

Mr. Conklin, 68, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Conklin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conklin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Luke S. Davidson

Mr. Davidson, 27, has had ITDM since 1991. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davidson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davidson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Joseph R. DePra

Mr. DePra, 35, has had ITDM since 2006. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. DePra understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DePra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana.

Joseph P. Finan

Mr. Finan, 63, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Finan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Finan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Rhode Island.

Luis Garcia

Mr. Garcia, 63, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garcia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garcia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Eric E.T. Gheen

Mr. Gheen, 23, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gheen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gheen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Aron A. Hanson

Mr. Hanson, 39, has had ITDM since 2007. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hanson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Tyler J. Hanson

Mr. Hanson, 47, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hanson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Antonio K. Hoes

Mr. Hoes, 41, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hoes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hoes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Maryland.

Ronald O. Knighten

Mr. Knighten, 67, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Knighten understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knighten meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Stephen P. Koons

Mr. Koons, 48, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or

more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Koons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koons meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Angel Luna

Mr. Luna, 51, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Luna understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Luna meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

David Mills

Mr. Mills, 73, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mills understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mills meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

Kenneth J. Moe

Mr. Moe, 53, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

James L. Pearson

Mr. Pearson, 58, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pearson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pearson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Walter R. Rentsch

Mr. Rentsch, 54, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rentsch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rentsch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Dakota.

Richard D. Revere

Mr. Revere, 55, has had ITDM since 1980. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Revere understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Revere meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Redmond L. Riley

Mr. Riley, 35, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Riley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Riley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

James H. Roth, Jr.

Mr. Roth, 58, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Stephen R. Shaffer

Mr. Shaffer, 61, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shaffer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shaffer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Matthew J. Thornton

Mr. Thornton, 51, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thornton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thornton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Oregon.

Michael H. Trayah

Mr. Trayah, 56, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Trayah understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trayah meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Vermont.

William Wagstaff, 3rd

Mr. Wagstaff, 47, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wagstaff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wagstaff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maryland.

Craig A. Wildenberg

Mr. Wildenberg, 46, has had ITDM since 1997. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wildenberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wildenberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Ronald E. Wulf

Mr. Wulf, 66, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wulf understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wulf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Samuel K. Zeweldie

Mr. Zeweldie, 41, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zeweldie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zeweldie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0037 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0037 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: May 26, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11638 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2002–12844; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2004–17984; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2006–26653; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0057; FMCSA–2011–0124; FMCSA–2011–0189; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 64 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http//www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On October 21, 2015, FMCSA published a notice announcing its decision to renew exemptions for 64 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (80 FR 63869). The public comment period ended on November 20, 2015, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV if that person:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this preceding.

VI. Conclusion

As of November 6, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 31 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (68 FR 37197; 68 FR 48989; 70 FR 17504; 70 FR 30997; 70 FR 42615; 70 FR 48797; 70 FR 61493;

72 FR 8417; 72 FR 21313; 72 FR 32703; 72 FR 36099; 72 FR 39879; 72 FR 40360; 72 FR 40362; 72 FR 52419; 72 FR 54971; 74 FR 26461; 74 FR 26464; 74 FR 34394; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 49069; 74 FR 57551; 76 FR 18824; 76 FR 29024; 76 FR 34136; 76 FR 37168; 76 FR 37173; 76 FR 53708; 76 FR 54530; 76 FR 55463; 76 FR 55465; 76 FR 62143; 76 FR 66123; 76 FR 67246; 78 FR 27281; 78 FR 34143; 78 FR 41188; 78 FR 41975; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 57679; 78 FR 63307; 78 FR 77782; 78 FR 78477; 79 FR 24298; 79 FR 53708; 80 FR 63869):

Martin R. Anaya (NM)
Kevan M. Burke (PA)
Thomas F. Caithamer (IL)
Juan Carranco (TX)
Westcott Clarke (MA)
James J. Doan (PA)
Kenneth J. Fisk (MI)
James E. Fix (SC)
James E. Goodman (AL)
James P. Greene (NY)
Bradley O. Hart (UT)
Randy L. Huelster (OK)
Jesus J. Huerta (NV)
Roger D. Kloss (IL)
Michael A. Lawson (KY)
Steven R. Lechtenberg (NE)
Joseph L. Mast (OR)
David Matos (NY)
Jesse R. McClary, Sr. (MO)
Roy L. Morgan (IL)
Earl R. Neugerbauer (CO)
Steven D. O'Donnell (NJ)
Robert M. Pickett II (MI)
Gerald J. Shamla (MN)
Steven C. Sheeder (IA)
Halman Smith (DE)
Jerry W. Stanfill (AR)
Brian C. Tate (OH)
Scott C. Teich (MN)
Bruce E. Thulin (NE)
Virgil E. Walker (TX)

The drivers were included in one of the following docket Nos: FMCSA–2003–15268; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2006–26653; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0057; FMCSA–2011–0124; FMCSA–2011–0189; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165. Their exemptions are effective as of November 6, 2015, and will expire on November 6, 2017.

As of November 25, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, Dennis E. White (PA), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 62935; 78 FR 76395; 80 FR 63869):

The driver was included in docket No. FMCSA–2013–0166. His exemption is effective as of November 25, 2015, and will expire on November 25, 2017.

As of November 26, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, Albert M. Divella (NV), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (78 FR 62935; 78 FR 76395; 80 FR 63869).

The driver was included in docket No. FMCSA–2013–0166. His exemption is effective as of November 26, 2015, and will expire on November 26, 2017.

As of November 28, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 17 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (69 FR 33997; 69 FR 61292; 70 FR 48797; 70 FR 61493; 71 FR 55820; 72 FR 39879; 72 FR 52421; 72 FR 54971; 72 FR 58362; 72 FR 67344; 73 FR 65009; 74 FR 41971; 74 FR 49069; 74 FR 57553; 76 FR 4413; 76 FR 62143; 76 FR 70212; 80 FR 63869):

Robert W. Bequeaith (IA)
Lloyd K. Brown (WY)
Kecia D. Clark-Welch (NC)
Charles A. DeKnikker, Sr. (NV)
Clarence N. Florey, Jr. (PA)
Loren H. Geiken (SD)
John N. Guilford (AL)
John E. Halcomb (GA)
Michael A. Hershberger (OH)
Patrick J. Hogan, Jr. (DE)
Raul Martinez (FL)
Robert A. Miller (KY)
Amilton T. Monteiro (MA)
David G. Oakley (SC)
John S. Olsen (PA)
Thomas J. Prusik (NJ)
Brent L. Seaux (LA)

The drivers were included in one of the following docket Nos: FMCSA–2004–17984; FMCSA–2005–21711; FMCSA–2007–27897; FMCSA–2007–29019. Their exemptions are effective as of November 28, 2015, and will expire on November 28, 2017.

As of November 30, 2015, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 14 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 66 FR 63289; 67 FR 68719; 68 FR 2629; 68 FR 52811; 68 FR 61860; 68 FR 64944; 70 FR 48797; 70 FR 61165; 70 FR 61493; 70 FR 67776; 72 FR 64273; 74 FR 62632; 76 FR 70215; 78 FR 64280; 80 FR 63869):

Thomas E. Adams (IN)
Terry J. Aldridge (MS)
Lennie D. Baker, Jr. (NC)
Jerry D. Bridges (TX)
William J. Corder (NC)
Gary R. Gutschow (WI)
James J. Hewitt (WI)
Rodney M. Mimbs (GA)
Walter F. Moniowczak (MI)
James R. Murphy (NY)
Chris A. Ritenour (MI)
Ronald L. Roy (IL)
Thomas E. Walsh (CA)
Kevin P. Weinhold (MA)

The drivers were included in one of the following docket Nos: FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711. Their exemptions are effective as of November 30, 2015, and will expire on November 30, 2017.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 12, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–11648 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0260]

Hours of Service of Drivers; Pilot Program To Allow Commercial Drivers To Split Sleeper Berth Time

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: FMCSA proposes a pilot program to allow temporary regulatory relief from the Agency's sleeper berth regulation, for a limited number of commercial drivers who have a valid commercial driver's license (CDL), and who regularly use a sleeper berth to accumulate their required 10 hours of non-duty work status. During the pilot program, participating drivers would have the option to split their sleeper berth time within parameters specified by FMCSA. Driver metrics would be collected for the duration of the study, and participants' safety performance

and fatigue levels would be analyzed. This pilot program seeks to produce statistically reliable evidence on the question whether split sleeper berth time affects driver safety performance and fatigue levels.

The Agency proposes criteria for participating drivers and carriers, outlines procedural steps and a data collection plan, and requests comments on these elements.

DATES: Comments must be received on or before August 7, 2017. The implementation date of the Pilot Program will be announced in subsequent **Federal Register** notices.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2016–0260 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submission must include the Agency name and the docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Research Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by email at *Nicole.michel@dot.gov,* or by telephone at 202–366–4354. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826. Further information will be posted at the Web site for the proposed pilot program: *www.sleeperberthstudy.com.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. In this notice, FMCSA requests certain information, but comments need not be limited to those requests.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0260), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* put the docket number, ''FMCSA–2016–0260'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2016–0260'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) to authorize the Secretary of Transportation (Secretary) to grant waivers and exemptions from some of the Federal Motor Carrier Safety Regulations (FMCSRs). The duration of a waiver is limited to 3 months, and the Secretary may grant the waiver without requesting public comment. By contrast, an exemption may be granted for up to 5 years,[1] and may be renewed. The Secretary must provide the public with an opportunity to comment on each exemption prior to granting or denying the request.

Section 4007 also authorizes the Secretary to conduct pilot programs, which are research studies where one or more exemptions are granted to allow for the testing of innovative alternatives to certain FMCSRs. FMCSA must publish in the **Federal Register** a detailed description of each pilot program, including the exemptions being considered, and provide notice and an opportunity for public comment before the effective date of the program. The Agency is required to ensure that the safety measures in the pilot programs are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be

[1] Changed from 2 years to 5 years by § 5206(a)(3) of the Fixing America's Surface Transportation (FAST) Act, effective October 1, 2015.

achieved through compliance with the safety regulations. Pilot programs are limited to 3 years from the starting date.

At the conclusion of each pilot program, FMCSA must report to Congress its findings, conclusions, and recommendations, including suggested amendments to laws and regulations that would enhance motor carrier, commercial motor vehicle (CMV), and driver safety, and improve compliance with the FMCSRs.

Section 4007 was implemented as an interim final rule (IFR) that created 49 CFR part 381 (63 FR 67600, Dec. 8, 1998). On August 20, 2004 (69 FR 51589), FMCSA adopted the IFR as a final rule (69 FR 51589). Part 381 established procedures to request waivers, apply for exemptions, and to propose pilot programs. It also required publishing notice of proposed pilot programs in the **Federal Register** to afford the public an opportunity for comment.

III. Background

Earlier Proposals

In early 2013, FMCSA informally expressed an interest in conducting a pilot program to study variations in the types of ''splits'' of the required off-duty periods that were allowed when using a sleeper berth. In June 2013, the National Association of Small Trucking Companies advised that it supported such a study and its members would be willing to participate. In December 2013, the American Trucking Associations, Inc. and the Minnesota Trucking Association submitted a joint proposal for a split sleeper-berth pilot program. FMCSA has developed today's proposal based in part on these prior expressions of support and interest. FMCSA also took into account new sleep studies and findings when developing the proposal to ensure valid results, without detrimental safety impacts throughout the program, were reasonably expected.

Applicable Regulations

As described in 49 CFR 395.1(g)(1), a driver who operates a property-carrying CMV equipped with a sleeper berth [2] and who uses the sleeper berth provision must take at least 8 consecutive hours in the sleeper berth, plus a separate period of 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two, before returning to on-duty status.

The Flexible Sleeper Berth Pilot Program offers participating drivers relief from the requirement for 8 consecutive hours in the sleeper berth.

Previous Research

During listening sessions for the Agency's 2010 notice of proposed hours-of-service rulemaking, many drivers said they would like some regulatory flexibility (*i.e.,* an exemption from consolidated sleeper berth time) to be able to sleep when they get tired or as a countermeasure to traffic congestion. Although the Agency's 2011 final rule did not include a split sleeper berth option, FMCSA determined that the issue should be explored in greater depth. Subsequently, FMCSA reviewed the literature and completed its own laboratory study on the safety impacts of split sleep.

The majority of sleep studies to date demonstrate that well-timed split sleep has either a positive or no effect on subsequent neurobehavioral performance. This supports the theory that the restorative effects of sleep on performance may be maintained when splitting total sleep time into multiple segments. Further, split sleep does not negatively affect daytime neurobehavioral performance when compared to a consolidated sleep period of the same total duration. Table 1 provides a list of selected studies that support the safety benefits of split sleep for transportation operators.

TABLE 1—SELECTED STUDIES SUPPORTING THE BENEFITS OF SPLIT SLEEP FOR TRANSPORTATION OPERATORS

Reference	Description
Thomas G. Raslear , Judith Gertler, and Amanda DiFiore (2013): ''Work schedules, sleep, fatigue, and accidents in the U.S. railroad industry,'' Fatigue: Biomedicine, Health & Behavior, 1:1–2, 99–115.	Study analyzes results from five surveys administered between 2006 and 2011 and provides a comprehensive description of fatigue in U.S. railroad workers employed in safety-sensitive positions.
Gianluca Ficca, John Axelsson, Daniel J. Mollicone, Vincenzo Muto, Michael V. Vitiello (2010): ''Naps, cognition and performance,'' Sleep Medicine Reviews 14, 249–258.	Literature review explores daytime split-sleep schedules and their effects on recovery (compared with consolidated sleep schedules) and the benefits of naps in terms of wakefulness performance and cognition.
Daniel J. Mollicone, Hans P.A. Van Dongen, David F. Dinges (2007): ''Optimizing sleep/wake schedules in space: Sleep during chronic nocturnal sleep restriction with and without diurnal naps,'' Acta Astronautica 60, 354–361.	Laboratory study of 93 adults investigates physiological sleep obtained in a range of restricted sleep schedules.
Daniel J. Mollicone, Hans P.A. Van Dongen, Ph.D., Naomi L. Rogers, Ph.D., and David F. Dinges, Ph.D. (2008): ''Response Surface Mapping of Neurobehavioral Performance: Testing the Feasibility of Split Sleep Schedules for Space Operations,'' Acta Astronautica, 63(7–10): 833–840.	Laboratory study of 90 adults examined feasibility of split-sleep schedules for astronauts with mission-critical space operations involving restricted nighttime sleep.
J. Horne (2011): ''Obesity and short sleep: unlikely bedfellows?,'' Obesity Reviews, 12: e84–e94.	Analysis critically examines the link between habitual short sleep and obesity, using a previously collected data set.
L. Di Milia, G. Kecklund (2013): ''The distribution of sleepiness, sleep and work hours during a long distance morning trip: A comparison between night- and non-night workers,'' Accident Analysis and Prevention, 53:17–22.	Study estimates the prevalence of chronic sleepiness and sleep restriction in a sample of 649 drivers.
Gregory Belenky, M.D., Steven R. Hursh, Ph.D., James Fitzpatrick, Hans P. A. Van Dongen, Ph.D. (2008): ''Split Sleeper Berth Use and Driver Performance: A Review of the Literature and Application of a Mathematical Model Predicting Performance from Sleep/Wake History and Circadian Phase,'' American Trucking Associations.	Study reviews the literature to examine the recuperative value of split versus consolidated sleep for performance and applies a mathematical model to evaluate the effects on performance of 288 sleeper berth provision compliant and non-compliant schedules.

[2] A ''sleeper berth'' is a sleeping compartment installed on a CMV that complies with the specifications in 49 CFR 393.76.

TABLE 1—SELECTED STUDIES SUPPORTING THE BENEFITS OF SPLIT SLEEP FOR TRANSPORTATION OPERATORS—Continued

Reference	Description
Gregory Belenky, M.D., Melinda L. Jackson, Ph.D., Lindsey Tompkins, Brieann Satterfield, Amy Bender (2012): ''Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health,'' FMCSA.	In-residence laboratory study of 53 healthy participants provides between-group comparisons of nighttime, split, or daytime sleep across a 5-day simulated workweek.

FMCSA sponsored an in-residence laboratory study entitled ''Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health.'' The study was conducted from January 2010 through May 2011. A copy of the report is filed in the docket identified at the beginning of this notice. Three sleep conditions were examined: Consolidated nighttime sleep, split sleep, and consolidated daytime sleep. With respect to objectively measured sleep, during the 5-day simulated workweek, participants in the nighttime condition slept the most (8.4 hours ± 13.4 minutes), participants in the daytime condition slept the least (6.4 hours ± 15.3 minutes), and participants in the split-sleep condition fell somewhere in between (7.16 hours ± 14.2 minutes). The study found that consolidated daytime sleep resulted in less total sleep time, increased sleepiness, and an increase in blood glucose and testosterone at the end of the workweek. However, performance was not significantly affected by sleep opportunity placement. The findings suggest that, with respect to total sleep time, consolidated sleep is better than split sleep if the consolidated sleep opportunity is placed at night, but that split sleep is better than consolidated sleep if the consolidated sleep opportunity is placed during the day. This laboratory study and the studies referenced in Table 1 (as well as others) provide the scientific basis for the present study.

Previous sleep studies that have shown detrimental effects caused by split sleep are described in Table 2.

TABLE 2—SELECTED STUDIES SHOWING NEGATIVE IMPACTS OF SPLIT SLEEP FOR TRANSPORTATION OPERATORS

Reference	Description
NTSB (1995). Factors that affect Fatigue in Heavy Truck Accidents. Volume I: Analysis. Safety Study NTSB Number: SS–95/01, NTIS Number: PB95–917001, Washington, DC.	Study determined that split-shift sleeper berth use increased the risk of fatality and that duration of last sleep as well as continuous sleep were the most important predictors of fatigue-related accidents.
Hertz, R.P., ''Tractor-Trailer Driver Fatality: The Role of Nonconsecutive Rest in a Sleeper Berth,'' Insurance Institute for Highway Safety, October 1987. Revised February 1988. *http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/05-16498-HOS-Final-Rule-8-25-05.htm*.	Study found that CMV driver fatality was significantly associated with split sleeper berth use and that the quality and quantity of sleep obtained in the sleeper berth was less than that obtained when sleeping at home.
Dingus, et al, ''Impact of Sleeper Berth Usage on Driver Fatigue,'' NHTSA, 2002. FMCSA–2004–19608–1994.	Concluded that sleeping in a moving vehicle impaired the quality of rest.[3]
Pilcher, JJ and Huffcutt, AI. ''Effects of sleep deprivation on performance: a meta-analysis.'' Pubmed.gov, May1996. *https://www.ncbi.nlm.nih.gov/pubmed/8776790*.	Found that a single, longer sleeping period was more refreshing that splitting sleep into multiple shorter periods and that fatigue and micro sleeps were more likely when an individual experienced disturbed sleep.

Most of these studies shown in Table 2 have findings that are potentially outdated due to advances in methods of conducting studies as well as advances in the understanding of fatigue, fatigue management, and how different sleep patterns affect performance and fatigue. More recent studies provide overwhelming documentation that the circadian rhythm affects fatigue far more than splitting sleep does, and that splitting sleep may be more beneficial than sleeping in a single day time period only. A literature review published by Belenky, *et al* in 2008 provides a strong case for conducting this pilot program, despite the earlier findings shown in Table 2. This literature review furthermore addresses the majority of publications mentioned in Table 2 with respect to why the subject of split sleep should be revisited.

IV. Pilot Program Requirements

Specific requirements for pilot programs are found in Subparts D and E of 49 CFR part 381. A pilot program is a study in which participants are given exemptions from one or more provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) for up to 3 years to gather data to evaluate alternatives or innovative approaches to regulations, while ensuring that an equivalent level of safety is maintained.

A pilot program must include a program plan that incorporates the following six elements:

(1) A scheduled duration of three years or less;

(2) A specific data collection and safety analysis plan that identifies a method of comparing the safety performance for motor carriers, CMVs, and drivers operating under the terms and conditions of the pilot program, with the safety performance of motor carriers, CMVs, and drivers that comply with the regulation;

(3) A reasonable number of participants necessary to yield statistically valid findings;

(4) A monitoring plan to ensure that participants comply with the terms and conditions of participation in the pilot program;

(5) Adequate safeguards to protect the health and safety of study participants and the general public; and

(6) A plan to inform the States and the public about the pilot program and to identify approved participants to

[3] Note that study is only relevant to driver's who participate in team driving scenarios, since this is the only situation where the vehicle can be moving while a driver is in the sleeper berth.

enforcement personnel and the general public. (49 CFR 381.500)

At the conclusion of each pilot program, the FMCSA will report to Congress the findings and conclusions of the program and any recommendations it considers appropriate, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs. (49 CFR 381.520)

V. Structure of the Pilot Program

The purpose of this pilot program is to examine whether regulatory flexibility related to the sleeper berth provision could be used to improve driver rest and alertness. Currently, any interstate driver who (1) operates a property-carrying CMV equipped with a sleeper berth, and (2) uses the sleeper berth provision, must take at least 8 consecutive hours in the sleeper berth, plus a separate 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two, before returning to on-duty status. The pilot program would give participating drivers a temporary exemption from this requirement for consolidated sleeper berth time, within parameters specified by the Agency. For study purposes, drivers would be allowed to split their sleep into no more than two sleeper berth segments. Current regulations allow drivers to use one 10 hour period, or splits of 9 and 1 hours or 8 and 2 hours. Drivers operating under the exemption for this study would be allowed to use any combination of split sleeper periods, totaling 10 hours, with neither period being less than 3 hours,[4] allowing for the driver to use splits of 3 and 7 hours, 4 and 6 hours, or two 5 hour periods. Following study enrollment, drivers would be able to use split or consolidated sleep schedules as they choose (within study parameters), but they must still meet the daily minimum rest requirements.

This pilot program would recruit CDL drivers who operate a CMV equipped with a sleeper berth and who regularly use the sleeper berth provision. The study group would include drivers from small, medium, and large carriers, as well as team drivers and owner-operators. To ensure statistical significance, approximately 200 study group participants are desired. Each participating driver would be recommended, but not required, to complete the Driver Education Module (Module 3) and Driver Sleep Disorders and Management Module (module 8) of the NAFMP before data collection starts to ensure participants are aware of the risks of driving fatigued and have tools available to manage their fatigue throughout the study. Drivers will be asked whether or not they chose to complete these modules, or whether they had completed them prior to study application.

Participating carriers that meet the eligibility criteria, as described later in this notice, may assist in recruiting study group drivers. Drivers will be enrolled in the study contingent upon approval from their carrier, as applicable (owner-operators will not need to meet this requirement).

The pilot program would also collect driver identification details and data on sleep, safety-critical events (SCEs), subjective sleepiness ratings, and behavioral alertness for up to a 90-day period per driver.

VI. Management of the Pilot Program

FMCSA has designated a project manager for the pilot program. Participating carriers would be publicly announced. FMCSA would develop the applications, agreements, and forms to be used by interested carriers and potential study group members.

Eligibility requirements and procedural matters are discussed in Sections VII and VIII of this notice.

VII. Eligibility Criteria To Participate

A. Motor Carriers

Motor carriers who have drivers participating in the pilot program must meet the following requirements:

- Grant permission for drivers to participate in the Flexible Sleeper Berth Pilot Program.
- Agree to comply with all pilot program procedures, which will be established and made available in written form to carrier-applicants prior to initiation of the pilot program.
- Grant permission for researchers to install an onboard monitoring system (OBMS) and/or electronic logging device (ELD) in each participating driver's vehicle throughout the study duration.
- Grant permission for drivers participating in the study to operate under the flexible sleeper berth exemption, as well as an exemption allowing participating drivers to maintain two hours of service logs (the study-provided ELD system will be the only way to properly track flexible sleeper berth hours of service).

B. Study Group Drivers

In order to participate in the Flexible Sleeper Berth Pilot Program, drivers must meet the following eligibility requirements:

- Be at least 21 years of age when the pilot begins.
- Operate a CMV equipped with a sleeper berth and regularly use the sleeper berth.
- Have a valid CDL.
- Be medically fit for duty (have a medical certificate that is valid throughout the period of participation).
- Have carrier approval for participation in the study (unless driver is an owner-operator).
- May not be a slip-seat driver who shares use of the same truck or truck-tractor with another driver(s) during separate periods such as shifts, days, or weeks.
- May not drive outside of the United States.
- Agree to the release of specific information[5] to FMCSA for purposes of the pilot.
- Agree to study procedures,[6] including the use of ELDs and camera-based OBMSs.

VIII. Process To Apply To Participate

A. Motor Carriers

- Visit the pilot program Web site (*www.sleeperberthstudy.com*) and complete an electronic application with screening questionnaire, which will request the following details, at a minimum: Name, carrier information, company name, job title, carrier size, and whether the carrier's drivers have previously completed the NAFMP (specifically modules 3 and 8). The carrier must grant permission for OBMS and/or ELD equipment to be temporarily installed in the vehicles of participating drivers, and for drivers to use the study-provided ELD system for recording HOS during the period of data collection (up to 90 days).
- The carrier's representative must acknowledge that driver data to include OBMS video, driving data, sleep data, performance data, and caffeine data must remain confidential and will not be shared with the company. The exception to this is ELD data for properly recording a driver's HOS.

[4] Note that if a driver has one period which is less than 3 hours, they are in compliance with current rules and therefore not driving under the exemption.

[5] Information will be specified by the time drivers apply to participate. Collection of specified information must be approved prior to initiation of pilot program.

[6] Procedures will be specified by the time drivers apply to participate. Specific procedures must be established and approved prior to initiation of the pilot program.

B. Study Group Drivers

• Visit the pilot program Web site (*www.sleeperberthstudy.com*) and complete an electronic application and screening questionnaire, which will request the following details, at a minimum: Name, contact information, MEC expiration date, CDL status, typical operation type (solo, team, or slip seat), location of their home terminal, whether they regularly drive a truck equipped with a sleeper berth, whether they regularly use their sleeper berth, whether they have previously completed modules 3 and 8 of the NAFMP, and whether they currently use paper or electronic HOS logs.

• Participate in a phone call with a member of the research team to confirm interest and eligibility.

• Obtain carrier permission to participate (unless the individual is an independent owner operator).

• Provide written, informed consent after a briefing session on data collection techniques and methods.

VIII. Data Collection Plan

Details of the data collection plan for this pilot program are subject to change based on comments to the docket and further review by analysts. Factors to be collected from each participating carrier and driver before the pilot program begins are discussed in Section VII of this notice. Participating drivers will drive an instrumented vehicle (instrumented by the research team with a study-provided OBMS and custom ELD) for up to 90 days. During a pre-study briefing, participants will receive a study-provided smartphone (installed with a variety of data collection applications), as well as a wrist actigraphy device.[7] Participants whose vehicles are not already equipped with a compatible ELD will be provided with an approved ELD application (installed on the study-provided smartphone). At a minimum, FMCSA will gather the following data during the study:

• ELD data, to evaluate duty hours and timing, driving hours and timing, rest breaks, off-duty time, and restart breaks.

• OBMS data, to evaluate driving behaviors, SCEs (crashes, near-crashes, and other safety-related events), reaction time, fatigue, lane deviations, and traffic density (as discerned from viewpoints of the multiple cameras), road curvature, and speed variability.

• Roadside violation data (from carriers and drivers, as well as the Commercial Driver's License Information System (CDLIS)), including vehicle, duty status, hazardous materials, and cargo-related violations (contingent upon inspections).

• Wrist actigraphy data, to evaluate total sleep time, time of day sleep was taken, sleep latency, and intermittent wakefulness.

• Psychomotor Vigilance Test (PVT)[8] data, to evaluate drivers' behavioral alertness based on reaction times.

• Subjective sleepiness ratings, using the Karolinska Sleepiness Scale,[9] to measure drivers' perceptions of their fatigue levels.

• Sleep logs, in which drivers will document when they are going to sleep, when they wake up, and whether they are using the sleeper berth. For split-sleep days, drivers will record how and why they chose to split their sleep. Other information that may be needed will also be collected through the participating carrier. Every effort will be made to reduce the burden on the carrier in collecting and reporting this data.

IX. Paperwork Reduction Act

The pilot program will require participating motor carriers to collect, maintain, and report to FMCSA certain information about their drivers who are participating in the pilot program. This will include identifying information and safety performance data for use in analyzing the drivers' safety history. The Agency will develop forms to promote uniformity in the data collected by the pilot carriers.

The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) prohibits agencies from conducting information collection (IC) activities until they analyze the need for the collection of information and how the collected data will be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time required to complete a particular form. The Agency submits its IC analysis and burden estimate to the Office of Management and Budget (OMB) as a formal information collection request (ICR); the Agency cannot conduct the information collection until OMB approves the ICR.

Because certain aspects of this pilot program—such as the content of forms and reports—have not been finalized, the Agency is not posting possible IC burden data at this time. When the pilot program is implemented, this information will be posted and additional comments will be taken.

X. Removal From the Program

FMCSA reserves the right to remove any motor carrier or driver from the pilot program for reasons related, but not limited to, failure to meet all program requirements.

XI. Request for Public Comments

Instructions for filing comments to the public docket are included earlier in this notice. FMCSA seeks information in the following areas, but responses need not be limited to these questions:

1. Are any additional safeguards needed to ensure that the pilot program provides a level of safety equivalent to that without the consolidated sleeper berth time exemption?
2. Should completion of modules 3 and 8 of the NAFMP be required for study participation (instead of recommended)?
3. Are the data collection efforts proposed for carriers and drivers so burdensome as to discourage participation?
4. How should data collection efforts differ for team drivers?

Issued on: May 31, 2017.

Daphne Y. Jefferson,

Deputy Administrator.

[FR Doc. 2017–11642 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–EX–P

[7] Participants will wear wrist actigraphy devices (similar to commercially available smart fitness watches) throughout their time in the study. Actigraphy is a minimally obtrusive, validated approach to assessing sleep/wake patterns.

[8] For this study, drivers will be required to complete daily iterations of a brief PVT, a 3-minute behavioral alertness test which measures drivers' alertness levels by timing their reactions to visual stimuli.

[9] The KSS is a 9-point Likert-type scale ranging from ''extremely alert'' to ''extremely sleepy'' and has been widely used in the literature as a subjective assessment of alertness.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2017–0100]

Request for Comments on the Renewal of a Previously Approved Information Collection: War Risk Insurance, Applications and Related Information

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. The Secretary of the U.S. Department of Transportation

may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 14, 2017 (**Federal Register** 13736, Vol. 82, No. 48).

DATES: Comments must be submitted on or before July 6, 2017.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Michael Yarrington, 202–366–1915, Office of Marine Insurance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: War Risk Insurance, Applications and Related Information.

OMB Control Number: 2133–0011.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The U.S. Government's War Risk Insurance program is a standby emergency program for national defense and national security. It becomes effective upon and simultaneously with the automatic termination of ocean marine commercial war risk insurance policies. Those policies are automatically terminated upon the outbreak of war, whether declared or not, between any of the five great powers (United States of America, United Kingdom, France, People's Republic of China, the Russian Federation) or upon the hostile detonation of a weapon of war employing atomic or nuclear fission.

The War Risk Insurance program makes it possible for applicants to obtain war risk insurance from the U.S. Government when such insurance is unavailable on reasonable terms from the commercial market. The program is mutually beneficial to the United States and to the ship owner in that it assures continued flow of essential U.S. trade and provides protection for the ship owner from loss by risks of war.

Respondents: Vessel owners or charterers interested in participating in MARAD's war risk insurance program.

Affected Public: Vessel owners or charterers interested in participating in MARAD's war risk insurance program.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Hours per Response: 12.8.

Annual Estimated Total Annual Burden Hours: 256.

Frequency of Response: Annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

* * * * *

By Order of the Maritime Administrator.

Dated: June 1, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–11636 Filed 6–5–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to an Executive Order Issued on January 23, 1995, Titled "Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is removing the names of one individual and one entity, whose property and interests in property have been blocked pursuant to an executive order issued on January 23, 1995, titled ''Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process,'' from the list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice are effective on June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202–622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, Assistant Director for Licensing, tel.: 202–622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*).

Notice of OFAC Actions

The following persons are removed from the SDN List, effective as of June 1, 2017.

Individual

1. NIDAL, Abu (a.k.a. AL BANNA, Sabri Khalil Abd Al Qadir); DOB May 1937; alt. DOB May 1940; POB Jaffa, Israel; Founder and Secretary General of ABU NIDAL ORGANIZATION (individual) [SDT].

Entity

1. ABU NIDAL ORGANIZATION (a.k.a. ARAB REVOLUTIONARY BRIGADES; a.k.a. ARAB REVOLUTIONARY COUNCIL; a.k.a. BLACK SEPTEMBER; a.k.a. FATAH REVOLUTIONARY COUNCIL; a.k.a. REVOLUTIONARY ORGANIZATION OF SOCIALIST MUSLIMS; a.k.a. ''ANO'') [SDT].

Dated: June 1, 2017.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–11656 Filed 6–5–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to the Foreign Narcotics Kingpin Designation Act

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 persons whose property and interests in property are blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act).

DATES: OFAC's actions described in this notice were effective on May 31, 2017.

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 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's Web site at *http://www.treasury.gov/ofac.*

Notice of OFAC Actions

On May 31, 2017, OFAC's Acting Director determined that the property and interests in property of the following persons are blocked pursuant to the Kingpin Act and placed them on the SDN List.

Individuals

1. AGUILAR RAMIREZ, Gabriel Jaime, Carrera 43 A 7 50, Of. 302, Medellin, Antioquia, Colombia; DOB 13 Nov 1956; POB Medellin, Antioquia, Colombia; Gender Male; Cedula No. 70117121 (Colombia); Matricula Mercantil No 21–291205–01 (Medellin) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of Juan Santiago GALLON HENAO, Pedro David GALLON HENAO, and LA OFICINA DE ENVIGADO. Also designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for acting for or on behalf of Juan Santiago GALLON HENAO and Pedro David GALLON HENAO.

2. ALVAREZ CASTRO, Santiago, Colombia; DOB 31 Dec 1956; POB Medellin, Antioquia, Colombia; Gender Male; Cedula No. 70118888 (Colombia) (individual) [SDNTK] (Linked To: CLAMASAN S.A.S.; Linked To: AGROINDUSTRIAS CIMA S.A.S.; Linked To: AGROPECUARIA MAIS SOCIEDAD POR ACCIONES SIMPLIFICADA). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for acting for or on behalf of Juan Santiago GALLON HENAO and Pedro David GALLON HENAO.

3. GALLON ARISTIZABAL, Mariana, Colombia; DOB 04 Nov 1992; POB Medellin, Antioquia, Colombia; Gender Female; Cedula No. 1152443588 (Colombia) (individual) [SDNTK] (Linked To: CLAMASAN S.A.S.; Linked To: GUISANES S.A.S.; Linked To: AGROPECUARIA MAIS SOCIEDAD POR ACCIONES SIMPLIFICADA; Linked To: AGROINDUSTRIAS CIMA S.A.S.). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for acting for or on behalf of Juan Santiago GALLON HENAO.

4. VARGAS GIRALDO, Claudia Mercedes, Colombia; DOB 04 Dec 1964; POB Medellin, Antioquia, Colombia; Gender Female; Cedula No. 42885957 (Colombia) (individual) [SDNTK] (Linked To: CLAMASAN S.A.S.; Linked To: GUISANES S.A.S.; Linked To: C.M.V. CARNES S.A.S.; Linked To: AGROPECUARIA MAIS SOCIEDAD POR ACCIONES SIMPLIFICADA). Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for acting for or on behalf of Juan Santiago GALLON HENAO.

Entities

1. AGROINDUSTRIAS CIMA S.A.S., Calle 8 B 65 191, Of. 519, Medellin, Antioquia, Colombia; NIT # 900383867–6 (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 Mariana GALLON ARISTIZABAL, Claudia Mercedes VARGAS GIRALDO, Juan Santiago GALLON HENAO, and Santiago ALVAREZ CASTRO.

2. AGROPECUARIA MAIS SOCIEDAD POR ACCIONES SIMPLIFICADA (a.k.a. AGROPECUARIA MAIS S.A.S.), Calle 35 85 B 40, Medellin, Antioquia, Colombia; Calle 8B No. 65–191, Ofc. 519, Medellin, Antioquia, Colombia; NIT # 900385162–1 (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 Claudia Mercedes VARGAS GIRALDO, Mariana GALLON ARISTIZABAL, Juan Santiago GALLON HENAO, and Santiago ALVAREZ CASTRO.

3. CLAMASAN S.A.S., Calle 8 B 65 191 Of. 519, Medellin, Antioquia, Colombia; La Granja La Primavera, Km. 13 Via Angelopolis-Municipio Amaga, Antioquia, Colombia; Granja Terranova, Via Caracoli-Municipio de San Roque, Antioquia, Colombia; NIT # 811039334–6 (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 Santiago ALVAREZ CASTRO and Juan Santiago GALLON HENAO.

4. C.M.V. CARNES S.A.S. (f.k.a. CLAUDIA MERCEDES VARGAS GIRALDO SOCIEDAD POR ACCIONES SIMPLIFICADA), Calle 8 B 65 191, Of. 519, Medellin, Antioquia, Colombia; NIT # 900392593–1 (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 Claudia Mercedes VARGAS GIRALDO and Juan Santiago GALLON HENAO.

5. GUISANES S.A.S., Calle 8 B No. 65 191, Oficina 519, Medellin, Antioquia, Colombia; NIT # 811039331–4 (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 Claudia Mercedes VARGAS GIRALDO, Mariana GALLON ARISTIZABAL, and Juan Santiago GALLON HENAO.

Dated: May 31, 2017.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–11622 Filed 6–5–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one individual and one entity whose property and interests in property are blocked pursuant to the executive order of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo,'' as amended by the executive order of July 8, 2014, ''Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo.''

DATES: OFAC's actions described in this notice were effective June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On June 1, 2017, OFAC blocked the property and interests in property of the following individual and entity pursuant to E.O. 13413, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo,'' as amended by E.O. 13671, ''Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo'':

Individual

OLENGA, Francois (Latin: OLENGA, François) (a.k.a. OKUNJI, Francois (Latin: OKUNJI, François); a.k.a. OLENGA TATE, Francois; a.k.a. OLENGA TETE, Francois (Latin: OLENGA TETE, François); a.k.a.

OTSHUNDI, Francois (Latin: OTSHUNDI, François)), Kinshasa, Congo, Democratic Republic of the; DOB 09 Oct 1948; alt. DOB 10 Sep 1948; alt. DOB 10 Jul 1949; POB Kindu, Maniema, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; citizen Congo, Democratic Republic of the; Gender Male; General; Chef de la Maison Militaire; Head of the Military House of the President (individual) [DRCONGO]. Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413, as amended by Executive Order 13671.

Entity

SAFARI CLUB (a.k.a. CENTRE DE LOISIR SAFARI CLUB; a.k.a. ''SAFARI BEACH''), Nsele, Kinshasa, Congo, Democratic Republic of the; Gombe, Kinshasa, Congo, Democratic Republic of the; Registration ID 1322 (Congo, Democratic Republic of the) [DRCONGO] (Linked To: OLENGA, Francois). Designated pursuant to section 1(a)(ii)(G) of Executive Order 13413, as amended by Executive Order 13671.

Dated: June 1, 2017.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2017–11673 Filed 6–5–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board; Amended: Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Veterans and Community Oversight and Engagement Board. The Veterans and Community Oversight and Engagement Board (Board) is a statutory committee established as required by Section 2(i) of the West Los Angeles Leasing Act of 2016, Public Law 114–226.

The Board will identify the goals of the community and Veteran partnership; provide advice and recommendations to the Secretary to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provide advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and the implementation of any successor master plans.

Committee members will be appointed by the Secretary and membership will be drawn from various sectors and organizations. Not less than 50 percent of the board members shall be Veterans; the non-Veteran board members shall be family members of the Veterans, Veteran advocates, services providers, real estate professionals familiar with housing development projects, or stakeholders.

Any member of the public seeking additional information should contact Kellie Condon, Designated Federal Officer (DFO), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, via email at *kellie.condon@va.gov;* or by phone at (805) 868–2076.

Dated: June 1, 2017.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–11683 Filed 6–5–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Solicitation of Nomination for Appointment to the Advisory Committee on Women Veterans

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominees to be considered for membership on the Advisory Committee on Women Veterans (Committee) for the 2017 membership cycle. The Committee is authorized by 38 U.S.C. 542 (Statute), to provide advice to the Secretary of Veterans Affairs (Secretary) on: The administration of VA's benefits and services (health care, rehabilitation benefits, compensation, outreach, and other relevant programs) for women Veterans; reports and studies pertaining to women Veterans; and the needs of women Veterans. In accordance with the Statute and the Committee's current charter, the majority of the membership shall consist of non-Federal employees appointed by the Secretary from the general public, serving as special government employees.

The Committee provides a Congressionally-mandated report to the Secretary each even-numbered year, which includes: An assessment of the needs of women Veterans, with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by VA; a review of the programs and activities of VA designed to meet such needs; and other recommendations (including recommendations for administrative and legislative action), as the Committee considers appropriate. The Committee reports to the Secretary, through the Director of the Center for Women Veterans.

The Secretary appoints Committee members, and determines the length of terms in which Committee members serve. A term of service for any member may not exceed 3 years. However, the Secretary can reappoint members for additional terms. Each year, there are several vacancies on the Committee, as members' terms expire.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted. Non-Veterans are also eligible for nomination.

In accordance with recently revised guidance regarding the ban on lobbyists serving as members of advisory boards and commissions, Federally-registered lobbyists are prohibited from serving on Federal advisory committees in an individual capacity. Additional information regarding this issue can be found at *www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boards-and-commissions.*

SUPPLEMENTARY INFORMATION: The Committee is currently comprised of 12 members. By statute, the Committee consists of members appointed by the Secretary from the general public, including: Representatives of women Veterans; individuals who are recognized authorities in fields pertinent to the needs of women Veterans, including the gender specific health-care needs of women; representatives of both female and male Veterans with service-connected disabilities, including at least one female Veteran with a service-connected disability and at least one male Veteran with a service-connected disability; and women Veterans who are recently separated from service in the Armed Forces.

The Committee meets at least two times annually, which may include a site visit to a VA field location. In accordance with Federal Travel Regulation, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties. A copy of the Committee's most recent charter and a list of the current membership can be found at *www.va.gov/ADVISORY/* or *www.va.gov/womenvet/.*

The Department makes every effort to ensure that the membership of its advisory committees is fairly balanced, in terms of points of view represented. In the review process, consideration is

given to nominees' potential to address the Committee's demographic needs (regional representation, race/ethnicity representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, etc.). Other considerations to promote a balanced membership include longevity of military service, significant deployment experience, ability to handle complex issues, experience running large organizations, and ability to contribute to the gender-specific health care and benefits needs of women Veterans.

Nomination Package Requirements

Nomination packages must be typed (12 point font) and include: (1) A cover letter from the nominee, and (2) a current resume that is no more than four pages in length. The cover letter must summarize: The nominees' interest in serving on the committee and contributions she/he can make to the work of the committee; any relevant Veterans service activities she/he is currently engaged in; the military branch affiliation and timeframe of military service (if applicable). To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, or any other factors that may give you a diverse perspective on women Veterans matters. Finally, please include in the cover letter the nominee's complete contact information (name, address, email address, and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional work experience, and Veterans service involvement, especially service that involves women Veterans' issues.

Nominations for membership on the Committee must be received by June 30, 2017, no later than 4:00 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle. All nomination packages should be sent to the Advisory Committee Management Office by email (recommended) or mail.

Please see contact information below: Advisory Committee Management Office (00AC), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, *vaadvisorycmte@va.gov.*

Dated: June 1, 2017.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–11635 Filed 6–5–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Tuesday,

No. 107 June 6, 2017

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE283

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean

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

ACTION: Notice; five proposed incidental harassment authorizations; request for comments.

SUMMARY: NMFS has received five requests for authorization to take marine mammals incidental to conducting geophysical survey activity in the Atlantic Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue incidental harassment authorizations (IHA) to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than July 6, 2017.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Information Solicited: NMFS is seeking public input on these requests for authorization as outlined below and request that interested persons submit information, suggestions, and comments concerning the applications. We will only consider comments that are relevant to marine mammal species that occur in U.S. waters of the Mid- and South Atlantic and the potential effects of geophysical survey activities on those species and their habitat.

Comments indicating general support for or opposition to hydrocarbon exploration or any comments relating to hydrocarbon development (*e.g.,* leasing, drilling) are not relevant to this request for comments and will not be considered. Comments should indicate whether they are general to the proposed authorizations described herein or are specific to one or more of the five proposed authorizations, and should be supported by data or literature citations as appropriate.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm.* In case of problems accessing these documents, please call the contact listed above.

National Environmental Policy Act

In 2014, the Bureau of Ocean Energy Management (BOEM) produced a Programmatic Environmental Impact Statement (PEIS) to evaluate potential significant environmental effects of geological and geophysical (G&G) activities on the Mid- and South Atlantic Outer Continental Shelf (OCS), pursuant to requirements of the National Environmental Policy Act (NEPA). These activities include geophysical surveys in support of hydrocarbon exploration, as are proposed in the MMPA applications before NMFS. The PEIS is available online at: *www.boem.gov/Atlantic-G-G-PEIS/.* NMFS participated in development of the PEIS as a cooperating agency and believes it appropriate to adopt the analysis in order to assess the impacts to the human environment of issuance of the subject IHAs. Information in the IHA applications, BOEM's PEIS, and this notice collectively provide the environmental information related to proposed issuance of these IHAs for public review and comment.

We will review all comments submitted in response to this notice as we complete the NEPA process, including a final decision of whether to adopt BOEM's PEIS and sign a Record of Decision related to issuance of IHAs, prior to a final decision on the incidental take authorization requests.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

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

Summary of Requests

In 2014–15, we received five separate requests for authorization for take of marine mammals incidental to geophysical surveys in support of hydrocarbon exploration in the Atlantic Ocean. The applicants are companies that provide services, such as geophysical data acquisition, to the oil and gas industry. Upon review of these requests, we submitted questions, comments, and requests for additional information to the individual applicant companies. As a result of these interactions, the applicant companies

provided revised versions of the applications that we determined were adequate and complete.

On August 18, 2014, we received an application from Spectrum Geo Inc. (Spectrum), followed by revised versions on November 25, 2014, May 14, 2015, and July 6, 2015. TGS–NOPEC Geophysical Company (TGS) submitted an application on August 25, 2014, followed by revised versions on November 17, 2014, and July 21, 2015. We also received a request from ION GeoVentures (ION) on September 5, 2014, followed by a revised version on June 24, 2015.

We subsequently posted these applications for public review and sought public input (80 FR 45195; July 29, 2015), stating that we would only consider comments relevant to marine mammal species that occur in U.S. waters of the Mid- and South Atlantic and the potential effects of geophysical survey activities on those species. We stated further that any comments should be supported by data or literature citations as appropriate, that comments indicating general support for or opposition to oil and gas exploration and development would not be considered inasmuch as such comments are not relevant to our consideration of the requests under the MMPA, and that we were particularly interested in information addressing the following topics:

1. Best available scientific information and appropriate use of such information in assessing potential effects of the specified activities on marine mammals and their habitat;

2. Application approaches to estimating acoustic exposure and take of marine mammals; and,

3. Appropriate mitigation measures and monitoring requirements for these activities.

We note that this notice for proposed IHAs does not concern one additional company (TDI-Brooks International, Inc. (TDI Brooks)) whose application was referenced in our July 29, 2015, **Federal Register** notice, and includes two other companies (WesternGeco, LLC (Western) and CGG) whose applications were not included in our July 29, 2015, notice. TDI-Brooks International, Inc. submitted a request for authorization related to a proposed survey to conduct deep water multibeam bathymetry and sub-bottom profiler data acquisition on October 22, 2014. However, public comment indicated that this application was improperly considered adequate and complete, and we subsequently concurred with this assessment and returned the application to TDI-Brooks for revision. We will provide separate notice of any proposed authorization related to this applicant upon receipt of an adequate and complete application, if appropriate.

The comments and information received during this public review period informed development of the proposed IHAs discussed in this notice, and all letters received are available online at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm.*

Following the close of the public review period, we received revised versions of several applications: From Spectrum on September 18, 2015, and from TGS on February 10, 2016. We received additional information from ION on February 29, 2016. Spectrum revised the scope of their proposed survey effort, while TGS and ION revised their estimates of the number of potential incidents of marine mammal exposure to underwater noise. Western submitted a request for authorization on March 3, 2015, followed by a revised version on February 17, 2016, that we determined was adequate and complete. CGG submitted a request for authorization on December 21, 2015, followed by revised versions on February 18, 2016, April 6, 2016, and May 26, 2016. These applications are adequate and complete at this time and are substantially similar to other applications previously released for public review. We do not anticipate offering additional discretionary public review of applications should we receive further requests for authorization related to proposed geophysical survey activity in the Atlantic Ocean.

All requested authorizations would be valid for the statutory maximum of one year from the date of effectiveness. All applicants propose to conduct two-dimensional (2D) marine seismic surveys using airgun arrays. Generally speaking, these surveys may occur within the U.S. Exclusive Economic Zone (*i.e.,* to 200 nautical miles (nmi)) from Delaware to approximately Cape Canaveral, Florida and corresponding with BOEM's Mid- and South Atlantic OCS planning areas, as well as additional waters out to 350 nmi from shore (Figure 1). Please see the applications for specific details of survey design. The use of airgun arrays is expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals. Multiple cetacean species with the expected potential to be present during all or a portion of the proposed surveys are described below.

Because the specified activity, specified geographic region, and proposed dates of activity are substantially similar for the five separate requests for authorization, we have determined it appropriate to provide a joint notice for the five proposed authorizations. However, while we provide relevant information together, we consider the potential impacts of the specified activities independently and make preliminary determinations specific to each request for authorization, as required by the MMPA.

Description of the Specified Activities

In this section, we provide a generalized discussion that is broadly applicable to all five requests for authorization, with project-specific portions indicated.

Overview

The five applicants propose to conduct deep penetration seismic surveys using airgun arrays as an acoustic source. Seismic surveys are one method of obtaining geophysical data used to characterize the subsurface structure, in this case in support of hydrocarbon exploration. The proposed surveys would be 2D surveys, designed to acquire data over large areas in order to screen for potential hydrocarbon prospectivity. To contrast, three-dimensional surveys may use similar acoustic sources but are designed to cover smaller areas with greater resolution (*e.g.,* with closer survey line spacing). A deep penetration survey uses an acoustic source suited to provide data on geological formations that may be thousands of meters (m) beneath the seafloor, as compared with a survey that may be intended to evaluate shallow subsurface formations or the seafloor itself (*e.g.,* for hazards).

An airgun is a device used to emit acoustic energy pulses into the seafloor, and generally consists of a steel cylinder that is charged with high-pressure air. Release of the compressed air into the water column generates a signal that reflects (or refracts) off of the seafloor and/or subsurface layers having acoustic impedance contrast. When fired, a brief (~0.1 second (s)) pulse of sound is emitted by all airguns nearly simultaneously. The airguns are silent during the intervening periods, with the array typically fired on a fixed distance (or shot point) interval. This interval may vary depending on survey objectives, but a typical interval for a 2D survey in relatively deep water might be 25 m (approximately every 10 s, depending on vessel speed). The return signal is recorded by a listening device and later analyzed with computer interpretation and mapping systems used to depict the subsurface. In this

case, towed streamers contain hydrophones that would record the return signal.

Individual airguns are available in different volumetric sizes and, for deep penetration seismic surveys, are towed in arrays (*i.e.,* a certain number of airguns of varying sizes in a certain arrangement) designed according to a given company's method of data acquisition, seismic target, and data processing capabilities. A typical large airgun array, as was considered in BOEM's PEIS (BOEM, 2014a), may have a total volume of approximately 5,400 in^3. The notional array modeled by BOEM consists of 18 airguns in three identical strings of six airguns each, with individual airguns ranging in volume from 105–660 in^3. Sound levels for airgun arrays are typically modeled or measured at some distance from the source and a nominal source level then back-calculated. Because these arrays constitute a distributed acoustic source rather than a single point source (*i.e.,* the ''source'' is actually comprised of multiple sources with some pre-determined spatial arrangement), the highest sound levels measurable at any location in the water will be less than the nominal source level. A common analogy is to an array of light bulbs; at sufficient distance the array will appear to be a single point source of light but individual sources, each with less intensity than that of the whole, may be discerned at closer distances. In addition, the effective source level for sound propagating in near-horizontal directions (*i.e.,* directions likely to impact most marine mammals in the vicinity of an array) is likely to be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array. The horizontal propagation of sound is reduced by noise cancellation effects created when sound from neighboring airguns on the same horizontal plane partially cancel each other out.

Survey protocols generally involve a predetermined set of survey, or track, lines. The seismic acquisition vessel (source vessel) will travel down a linear track for some distance until a line of data is acquired, then turn and acquire data on a different track. In addition to the line over which data acquisition is desired, full-power operation may include run-in and run-out. Run-in is approximately 1 kilometer (km) of full-power source operation before starting a new line to ensure equipment is functioning properly, and run-out is additional full-power operation beyond the conclusion of a trackline (typically half the distance of the acquisition streamer behind the source vessel) to ensure that all data along the trackline are collected by the streamer. Line turns typically require two to three hours due to the long trailing streamers (*e.g.,* 10 km). Spacing and length of tracks varies by survey. Survey operations often involve the source vessel, supported by a chase vessel. Chase vessels typically support the source vessel by protecting the long hydrophone streamer from damage (*e.g.,* from other vessels) and otherwise lending logistical support (*e.g.,* returning to port for fuel, supplies, or any necessary personnel transfers). Chase vessels do not deploy acoustic sources for data acquisition purposes; the only potential effects of the chase vessels are those associated with normal vessel operations.

Dates and Duration

All companies requested IHAs covering the statutory maximum of one year from the date of issuance, but the expected temporal extent of survey activity varies by company and may be subject to unpredictability due to inclement weather days, equipment maintenance and/or repair, transit to and from ports to survey locations, and other contingencies. Spectrum plans a six-month data acquisition program, consisting of an expected 165 days of seismic operations. TGS plans a full year data acquisition program, with an estimated 308 days of seismic operations. ION plans a six-month data acquisition program, with an estimated 70 days of seismic data collection. Western plans a full year data acquisition program, with an estimated 208 days of seismic operations. CGG plans a six-month data acquisition program (July–December), with an estimated 155 days of seismic operations. Seismic operations would typically occur 24 hours per day.

Specific Geographic Region

The proposed survey activities would occur off the Atlantic coast of the U.S., within BOEM's Mid-Atlantic and South Atlantic OCS planning areas (*i.e.,* from Delaware to Cape Canaveral, FL), and out to 350 nmi (648 km) (see Figure 1, reproduced from BOEM, 2014a). The seaward limit of the region is based on the maximum constraint line for the extended continental shelf (ECS) under the United Nations Convention on the Law of the Sea. Until such time as an ECS is established by the U.S., the region between the U.S. exclusive economic zone (EEZ) boundary and the ECS maximum constraint line (*i.e.,* 200–350 nmi from shore) is part of the global commons, and BOEM determined it appropriate to include this area within the area of interest for geophysical survey activity.

The specific survey areas differ within this region; please see maps provided in the individual applications (Spectrum: Figure 1; Western: Figures 1–1 to 1–4; TGS: Figures 1–1 to 1–4; ION: Figure 1; CGG: Figure 3). A map of all proposed surveys may be viewed online at: *www.boem.gov/Atlantic-G-and-G-Permitting/* (accessed on October 18, 2016); however, note that this map displays all permits requested from BOEM, including potential surveys for companies who have not yet requested authorization under the MMPA. The survey shown as ''GXTechnology'' on the referenced map is the same as what we describe here as being proposed by ION. In addition to general knowledge and other citations contained herein, this section relies upon the descriptions found in Sherman and Hempel (2009) and Wilkinson *et al.* (2009). As referred to here, productivity refers to fixated carbon (*i.e.,* g $C/m^2/yr$) which relates to the carrying capacity of an ecosystem.

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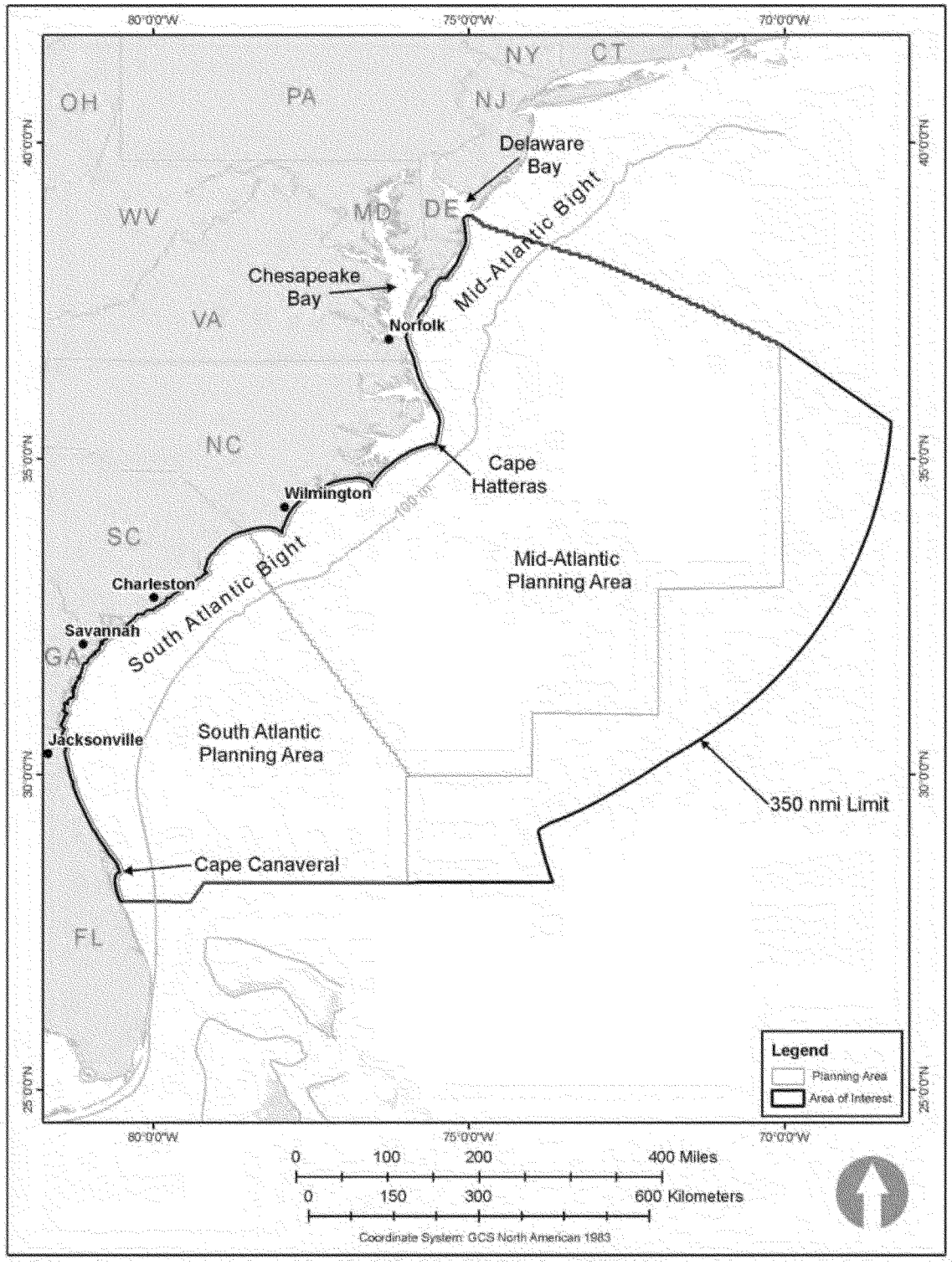

Figure 1. Specific Geographic Region

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The entire U.S. Atlantic coast region extends from the Gulf of Maine past Cape Hatteras to Florida. The region is characterized by its temperate climate and proximity to the Gulf Stream Current, and is generally considered to be of moderately high productivity, although the portion of the region from Cape Cod to Cape Hatteras is one of the most productive areas in the world due to upwellings along the shelf break created by the western edge of the Gulf Stream. Sea surface temperatures (SST) exhibit a broad range across this region, with winter temperatures ranging from 2–20 °C in the north and 15–22 °C in the south, while summer temperatures, consistent in the south at approximately 28 °C, range from 15–27 °C in the northern portion.

The northern portion of this region (*i.e.,* north of Cape Hatteras) is more complex, with four major sub-areas, only one of which is within the specified geographic region: The Mid-Atlantic Bight (MAB). South of Cape Cod, there is strong stratification along the coast where large estuaries occur (*e.g.,* Chesapeake Bay, Pamlico Sound). The Gulf Stream is highly influential on both the northern and southern portions of the region, but in different ways. Meanders of the current directly affect the southern portion of the region, where the Gulf Stream is closer to shore, while warm-core rings indirectly affect the northern portion (Belkin *et al.,* 2009). In addition, subarctic influences can reach as far south as the MAB, but the convergence of the Gulf Stream with the coast near Cape Hatteras does not allow for significant northern influence into waters of the South Atlantic Bight.

The MAB includes the continental shelf and slope waters from Georges Bank to Cape Hatteras, NC. The retreat of the last ice sheet shaped the morphology and sediments of this area. The continental shelf south of New England is broad and flat, dominated by fine grained sediments (sand and silt). The shelf slopes gently away from the shore out to approximately 100 to 200 km offshore, where it transforms into the continental slope at the shelf break (at water depths of 100 to 200 m). Along the shelf break, numerous deep-water canyons incise the slope and shelf. The sediments and topography of the canyons are much more heterogeneous than the predominantly sandy top of the shelf, with steep walls and outcroppings of bedrock and deposits of clay.

The southwestern flow of cold shelf water feeding out of the Gulf of Maine and off Georges Bank dominates the circulatory patterns in this area. The countervailing Gulf Stream provides a source of warmer water along the coast as warm-core rings and meanders break off from the Gulf Stream and move shoreward, mixing with the colder shelf and slope water. As the shelf plain narrows to the south (the extent of the continental shelf is narrowest at Cape Hatteras), the warmer Gulf Stream waters run closer to shore.

The southeast continental shelf area extends approximately 1,500 km from Cape Hatteras, NC south to the Straits of Florida (Yoder, 1991). The continental shelf in the region reaches up to approximately 200 km offshore. The Gulf Stream influences the region with minor upwelling occurring along the Gulf Stream front. The area is approximately 300,000 km^2, includes several protected areas and coral reefs (Aquarone, 2008); numerous estuaries and bays, nearshore and barrier islands; and extensive coastal marshes that provide habitats for numerous marine and estuarine species. A 10–20 km wide coastal zone is characterized by high levels of primary production throughout the year, while offshore, on the middle and outer shelf, upwelling along the Gulf Stream front and intrusions from the Gulf Stream cause seasonal phytoplankton blooms. Because of its high productivity, this sub-region supports active commercial and recreational fisheries (Shertzer *et al.,* 2009).

Detailed Description of Activities

Detailed survey descriptions, as given in specific applications, are provided here without regard for the mitigation measures proposed by NMFS. In some cases, our proposed mitigation measures may affect the proposed survey plan (*e.g.,* distance from coast, areas to be avoided at certain times of year). Please see ''Proposed Mitigation,'' later in this document, for details on those proposed mitigation requirements. Please see Table 1 for a summary of airgun array characteristics.

ION—ION proposes to conduct a 2D marine seismic survey off the U.S. east coast from Delaware to northern Florida (~38.5° N. to ~27.9° N.), and from 20 km from the coast to >600 km from the coast (see Figure 1 of ION's application). The survey would involve one source vessel, the M/V *Discoverer,* and one chase vessel, the M/V *Octopus,* or similar (see ION's application for vessel details). The *Discoverer* has a cruising speed of 9.5 knots (kn), maximum speed of 10 kn, and would tow gear during data acquisition at ~4 kn. The survey plan consists of five widely-spaced transect lines (~20–190 km apart) roughly parallel to the coast and 14 widely-spaced transect lines (~30–220 km apart) in the onshore-offshore direction totaling ~13,062 km of data acquisition line. Effort planned by depth bin is as follows: ~48 percent >3,000 m; ~18 percent 1,000–3,000 m; ~22 percent 100–1,000 m; ~12 percent <100 m. There would be limited additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard. Therefore, there could be some small amount of use of the acoustic source not accounted for in the total estimated line-km; however, this activity is difficult to quantify in advance and would represent an insignificant increase in effort.

The acoustic source planned for deployment is a 36-airgun array with a total volume of 6,420 in^3. The source vessel would tow a single hydrophone streamer, up to 12 km long. The 36-airgun array would consist of a mixture of Bolt 1500LL and sleeve airguns ranging in volume from 40 in^3 to 380 in^3; the larger (300–380 in^3) airguns would be Bolt airguns, and the smaller (40–150 in^3) airguns would be sleeve airguns. The difference between the two types of airguns is in the mechanical parts that release the pressurized air; however, the bubble and acoustic energy released by the two types of airguns are effectively the same. The airguns would be configured as four identical linear arrays or ''strings'' (see Figure 3 of ION's application). Each string would have nine airguns; the first and last airguns in the strings would be spaced ~15.5 m apart.

The four airgun strings would be distributed across an approximate area of 34 x 15.5 m behind the vessel and would be towed ~50–100 m behind the vessel at 10-m depth. The firing pressure of the array would be 2,000 pounds per square inch (psi). The airgun array would fire every 50 m or 20–24 s, depending on exact vessel speed—a longer interval than is typical of most industry seismic surveys. ION provided modeling results for their array, including notional source signatures, 1/3-octave band source levels as a function of azimuth angle, and received sound levels as a function of distance and direction at 16 representative sites in the proposed survey area. For more detail, please see ''Estimated Take by Incidental Harassment,'' later in this document, as well as Figures 4–6 and Appendix A of ION's application.

Spectrum—Spectrum proposes to conduct a 2D marine seismic survey off the U.S. east coast from Delaware to northern Florida, extending throughout BOEM's Mid- and South Atlantic OCS planning areas. The survey would be conducted on an approximately 25 x 32 km grid; grid size may vary to minimize overall survey distance (see Figure 1 of Spectrum's application). The closest trackline to shore would be approximately 35 km (off Cape Hatteras). The survey would involve one source vessel and one chase vessel (see Spectrum's application for vessel details). The survey plan includes a total of approximately 21,635 km of data acquisition line, including allowance for lines expected to be resurveyed due to environmental or technical reasons. Water depths range from 30 to 5,410 m. There would be limited additional operations associated with equipment testing, startup, and repeat coverage of any areas where initial data quality is sub-standard.

The acoustic source planned for deployment is a 32-airgun array with a total volume of 4,920 in^3. The source vessel would tow a single 12-km hydrophone streamer. The 32-airgun array would consist of individual airguns ranging in volume from 50 in^3 to 250 in^3. The firing pressure of the array would be 2,000 psi. The airguns would be configured as four subarrays (see Figure 2 in Appendix A of Spectrum's application). Each string would have eight to ten airguns and strings would be spaced 10 m apart; the total array dimensions would be 40 m wide x 30 m long.

The four airgun strings would be towed at 6 to 10-m depth and the airgun array would fire every 25 m or 10 s, depending on exact vessel speed (expected to be 4–5 kn). Spectrum provided modeling results for their array, including notional source signatures, 1/3-octave band source levels as a function of azimuth angle, and received sound levels as a function of distance and direction at 16 representative sites in the proposed survey area. For more detail, please see Appendix A of Spectrum's application, as well as ''Estimated Take by Incidental Harassment,'' later in this document.

TGS—TGS proposes to conduct a 2D marine seismic survey off the U.S. east coast from Delaware to northern Florida, extending throughout BOEM's Mid- and South Atlantic OCS planning areas (see Figure 1–1 of TGS's application). The survey would involve two source vessels operating independently of one another (expected to operate at least 100 km apart), with each attended by one chase vessel. This approach was selected to allow TGS to complete the survey plan within one year rather than spread over multiple years. The survey plan consists of two contiguous survey grids with differently spaced lines (see Figures 1–1 to 1–4 of TGS's application). Lines are spaced 100 km apart in approximately the eastern half of the project area and approximately 25 km apart in the western portion of the survey area. A third, more detailed grid (6–10 km spacing) covers the continental shelf drop-off, approximately near the center of the proposed survey area from north to south. The closest trackline to the coast would be 25 km. The survey plan includes a total of 55,133 km of data acquisition line plus an additional 3,167 km of trackline expected for run-in/run-out, for a total of 58,300 km. Water depths range from 25–5,500 m. There would be limited additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The acoustic sources planned for deployment are 48-airgun arrays with a total volume of 4,808 in^3. However, only 40 individual airguns would be used at any given time, with remaining airguns held in reserve in case of equipment failure. The source vessels would tow a single 12-km long hydrophone streamer. The airgun array would use Sodera G-gun II airguns ranging in volume from 22 in^3 to 250 in^3. The airguns would be configured as four identical subarrays (see Figure 3 in Appendix B of TGS's application), with individual elements spaced 8 m apart and arranged such that the largest elements are in the middle of each subarray and smaller sources at the front and end. The four airgun strings would be towed behind the vessel at 7-m depth. The airgun array would fire every 25 m (approximately every 10 s, depending on vessel speed), with expected transit speed of 4–5 kn. More detail regarding TGS's acoustic source and modeling related to TGS's application is provided in ''Estimated Take by Incidental Harassment,'' later in this document, as well as Appendix B of TGS's application.

Western—Western proposes to conduct a 2D marine seismic survey off the U.S. east coast from Maryland to northern Florida, extending through the majority of BOEM's Mid- and South Atlantic OCS planning areas (see Figure 1–1 of Western's application). The survey plan consists of a survey grid with differently spaced lines (see Figures 1–1 to 1–4 of Western's application). Lines are spaced 25 km apart in approximately the southwestern third of the project area and approximately 6 km apart in the remainder of the survey area. The closest trackline to the coast would be 30 km. The survey plan includes a total of 26,641 km of data acquisition line plus an additional 689 km of lines expected for run-in/run-out, for a total of 27,330 km. Water depths range from 20–4,700 m. The survey would involve one source vessel, the M/V *Western Pride,* as well as two chase vessels, the M/V *Michael Lawrence* and M/V *Amber G,* and a supply vessel, the M/V *Melinda B. Adams* or similar (see Appendix B of Western's application for vessel details). There would be limited additional operations associated with equipment testing, startup, and repeat coverage of any areas where initial data quality is sub-standard.

The seismic source planned for deployment is a 24-airgun array with a total volume of 5,085 in^3. The source vessel would tow a single 10.5-km hydrophone streamer. The 24-airgun array would consist of individual Bolt v5085 airguns. The airguns would be configured as three identical subarrays of eight airguns each with 8 m spacing between strings. The three airgun strings would be towed at 10-m depth and the airgun array would fire every 37.5 m (approximately every 16 s, depending on vessel speed), with expected transit speed of 4–5 kn. More detail regarding Western's acoustic source and modeling related to Western's application is provided in ''Estimated Take by Incidental Harassment,'' later in this document, as well as Appendix B of Western's application.

CGG—CGG proposes to conduct a 2D marine seismic survey off the U.S. east coast from Virginia to Georgia, extending through the majority of BOEM's Mid- and South Atlantic OCS planning areas (see Figure 3 of CGG's application). The survey plan consists of 53 survey tracklines in a 20 km by 20 km orthogonal grid (see Figure 3 of CGG's application). The tracklines would be 300 to 750 km in length, with the closest trackline to the coast at 80 km. The survey plan includes a total of 28,670 km of data acquisition line, in water depths ranging from 100–5,000 m. The survey would involve one source vessel, as well as two support vessels. There would be limited additional operations associated with equipment testing, startup, and repeat coverage of any areas where initial data quality is sub-standard.

The seismic source planned for deployment is a 36-airgun array with a total volume of 5,400 in.^{3} The source vessel would tow a single 10 to 12-km hydrophone streamer. The 36-airgun array would consist of individual Bolt 1900/1500 airguns. The airguns would be configured as four subarrays of nine airguns each (see Figure 2 in CGG's application), with total dimensions of 24 m width by 16.5 m length and 8 m separation between strings. The four airgun strings would be towed at 7-m depth and the airgun array would fire every 25 m (approximately every 16 s, depending on vessel speed), with expected transit speed of 4.5 kn. More detail regarding CGG's acoustic source and modeling related to CGG's application is provided in ''Estimated Take by Incidental Harassment,'' later in this document, as well as CGG's application.

TABLE 1—SURVEY AND AIRGUN ARRAY CHARACTERISTICS

Company	Total planned survey (km)	Total volume (in^3)	Number of guns	Number of strings	Nominal source output (downward) [1]			Shot interval (m)	Tow depth (m)
					0-pk	pk-pk	rms		
ION	13,062	6,420	36	4	257	263	[4] 247	50	10
Spectrum	21,635	4,920	32	4	266	272	243	25	6–10
TGS	58,300	4,808	40	4	255	[3]	240	25	7
Western	27,330	5,085	24	3	[3]	262	235	37.5	10
CGG	28,670	5,400	36	4	[3]	259	[3 4] 243	25	7
BOEM [2]	n/a	5,400	18	3	247	[3]	233	n/a	6.5

[1] See ''Description of Active Acoustic Sound Sources,'' later in this document, for discussion of these concepts.
[2] Notional array characteristics modeled and source characterization outputs from BOEM's PEIS (2014a) provided for comparison.
[3] Values not given; however, SPL (pk-pk) is usually considered to be approximately 6 dB higher than SPL (0-pk) (Greene, 1997).
[4] Value decreased from modeled 0-pk value by minimum 10 dB (Greene, 1997).

Proposed Mitigation

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

We reviewed the applicants' proposals, the requirements specified in BOEM's PEIS, seismic mitigation protocols required or recommended elsewhere (*e.g.,* DOC, 2013; IBAMA, 2005; Kyhn *et al.,* 2011; JNCC, 2010; DEWHA, 2008; BOEM, 2016a; DFO, 2008; MMOA, 2015; Nowacek and Southall, 2016), and the available scientific literature. We also considered recommendations given in a number of review articles (*e.g.,* Weir and Dolman, 2007; Compton *et al.,* 2008; Parsons *et al.,* 2009; Wright and Cosentino, 2015; Stone, 2015). The suite of mitigation measures proposed here differs in some cases from the measures proposed by the applicants and/or those specified by BOEM in their PEIS and Record of Decision (ROD) in order to reflect what we believe to be the most appropriate suite of measures to satisfy the requirements of the MMPA. In carrying out the MMPA's mandate, we apply a context-specific balance between the manner in which and the degree to which measures are expected to reduce impacts to the affected species or stocks and their habitat and practicability for the applicant. (The framework for such an evaluation is explained further in 82 FR 19460, 19502 (April 27, 2017) (Proposed Rule for Take of Marine Mammals Incidental to U.S. Navy Operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar.) Both of these facets point to the need for a basic system of seismic mitigation protocols (which may be augmented as necessary) that may be implemented in the field, reduce subjective decision-making for observers to the extent possible, and appropriately weighs a range of potential outcomes from sound exposure in determining what should be avoided or minimized where possible.

Past mitigation protocols for geophysical survey activities using airgun arrays have focused on avoidance of exposures to received sound levels exceeding NMFS's historical injury criteria (*e.g.,* 180 dB rms), rather than also weighing the potentially detrimental effects of increased input of sound at lower levels into the environment (*e.g.,* through use of mitigation guns or extended periods on the water to reshoot lines following shutdowns of the acoustic source), while also unrealistically assuming that shutdown protocols are capable of avoiding all potential for auditory injury. In addition to a basic suite of seismic mitigation protocols, we also include measures that might not be required for other activities (*e.g.,* time-area closures specific to the proposed surveys discussed here) but that are warranted here given the proposed spatiotemporal scope of these specified activities and associated potential for population-level effects and/or take of large numbers of individuals of certain species.

Mitigation-Related Monitoring

Monitoring by independent, dedicated, trained marine mammal observers is required. Note that, although we propose requirements related only to observation of marine mammals, we hereafter use the generic term ''protected species observer'' (PSO) to avoid confusion with protocols that may be required of the applicants pursuant to other relevant statutes. Independent observers are employed by a third-party observer provider; vessel crew may not serve as PSOs. Dedicated observers are those who have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct the seismic survey operator (*i.e.,* vessel captain and crew) with regard to the presence of marine mammals and mitigation requirements. Communication with the operator may include brief alerts regarding maritime hazards. Trained PSOs have successfully completed an approved PSO training course (see ''Proposed Monitoring and Reporting''), and experienced PSOs have additionally gained a minimum of 90 days at-sea experience working as a PSO during a deep penetration seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. Both visual and acoustic monitoring is required; training and experience is specific to either visual or acoustic PSO duties. An experienced visual PSO must have completed approved, relevant training and gained the requisite experience working as a visual PSO. An experienced acoustic PSO must have completed a passive acoustic monitoring (PAM) operator training course and gained the requisite experience working as an acoustic PSO (*i.e.,* PAM operator).

NMFS does not currently approve specific training courses; observers may be considered appropriately trained by having satisfactorily completed training that meets all the requirements specified

herein (see ''Proposed Monitoring and Reporting''). In order for PSOs to be approved, NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course. A PSO may be trained and/or experienced as both a visual PSO and PAM operator and may perform either duty, pursuant to scheduling requirements. PSO watch schedules shall be devised in consideration of the following restrictions: (1) A maximum of two consecutive hours on watch followed by a break of at least one hour between watches for visual PSOs; (2) a maximum of four consecutive hours on watch followed by a break of at least two consecutive hours between watches for PAM operators; and (3) a maximum of 12 hours observation per 24-hour period. Further information regarding PSO requirements may be found in the ''Proposed Monitoring and Reporting'' section, later in this document.

Visual—All source vessels must carry a minimum of one experienced visual PSO, who shall be designated as the lead PSO, coordinate duty schedules and roles, and serve as primary point of contact for the operator. While it is desirable for all PSOs to be qualified through experience, we do not wish to foreclose opportunity for newly trained PSOs to gain the requisite experience. Therefore, the lead PSO shall devise the duty schedule such that experienced PSOs are on duty with trained PSOs (*i.e.,* those PSOs with appropriate training but who have not yet gained relevant experience) to the maximum extent practicable in order to provide necessary mentorship. During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur; whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array (see ''Ramp-ups'' below). PSOs should use NOAA's solar calculator (*www.esrl.noaa.gov/gmd/grad/solcalc/*) to determine sunrise and sunset times at their specific location. We recognize that certain daytime conditions (*e.g.,* fog, heavy rain) may reduce or eliminate effectiveness of visual observations; however, on-duty PSOs shall remain alert for marine mammal observational cues and/or a change in conditions.

With regard to specific observational protocols, we largely follow those described in Appendix C of BOEM's PEIS (BOEM, 2014a). The lead PSO shall determine the most appropriate observation posts that will not interfere with navigation or operation of the vessel while affording an optimal, elevated view of the sea surface. PSOs shall coordinate to ensure 360° visual coverage around the vessel, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. Within these broad outlines, the lead PSO and PSO team will have discretion to determine the most appropriate vessel- and survey-specific system for implementing effective marine mammal observational effort. Any observations of marine mammals by crew members aboard any vessel associated with the survey, including chase vessels, should be relayed to the source vessel and to the PSO team.

Visual monitoring must begin not less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. If any marine mammal is observed at any distance from the vessel, a PSO would record the observation and monitor the animal's position (including latitude/longitude of the vessel and relative bearing and estimated distance to the animal) until the animal dives or moves out of visual range of the observer. A PSO would continue to observe the area to watch for the animal to resurface or for additional animals that may surface in the area. Visual PSOs shall communicate all observations to PAM operators, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), PSOs should conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods.

Acoustic—All source vessels must use a towed PAM system for potential detection of marine mammals. The system must be monitored at all times during use of the acoustic source, and acoustic monitoring must begin at least 30 minutes prior to ramp-up. All source vessels shall carry a minimum of one experienced PAM operator. PAM operators shall communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. We acknowledge generally that PAM has significant limitations. For example, animals may only be detected when vocalizing, species making directional vocalizations must vocalize towards the array to be detected, species identification and localization may be difficult, etc. However, we believe that for certain species and in appropriate environmental conditions it is a useful complement to visual monitoring during good sighting conditions and that it is the only meaningful monitoring technique during periods of poor visibility. Further detail regarding PAM system requirements may be found in the ''Proposed Monitoring'' section, later in this document. The effectiveness of PAM depends to a certain extent on the equipment and methods used and competency of the PAM operator, but no established standards are currently in place. We do offer some specifications later in this document and each applicant has provided a PAM plan.

Following protocols described by the New Zealand Department of Conservation for seismic surveys conducted in New Zealand waters (DOC, 2013), survey activity may continue for brief periods of time when the PAM system malfunctions or is damaged. Activity may continue for 30 minutes without PAM while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring under the following conditions:

- Daylight hours and sea state is less than or equal to Beaufort sea state (BSS) 4;
- No marine mammals (excluding small delphinoids; see below) detected solely by PAM in the exclusion zone (see below) in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

As noted previously, all source vessels must carry a minimum of one experienced visual PSO and one experienced PAM operator. Although a given PSO may carry out either visual PSO or PAM operator duties during a survey (assuming appropriate training),

the required experienced PSOs may not be the same person. The observer designated as lead PSO (including the full team of visual PSOs and PAM operators) must be an experienced visual PSO. The applicant may determine how many PSOs are required to adequately fulfill the requirements specified here. To summarize, these requirements are: (1) Separate experienced visual PSOs and PAM operators; (2) 24-hour acoustic monitoring during use of the acoustic source; (3) visual monitoring during use of the acoustic source by two PSOs during all daylight hours and during nighttime ramp-ups; (4) maximum of two consecutive hours on watch followed by a minimum of one hour off watch for visual PSOs and a maximum of four consecutive hours on watch followed by a minimum of two consecutive hours off watch for PAM operators; and (5) maximum of 12 hours of observational effort per 24-hour period for any PSO, regardless of duties.

Buffer Zone and Exclusion Zone

The PSOs shall establish and monitor a 500-m exclusion zone and a 1,000-m buffer zone. These zones shall be based upon radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown of the acoustic source. Use of the buffer zone in relation to ramp-up is discussed under ''Ramp-up.'' Further detail regarding the exclusion zone and shutdown requirements is given under ''Exclusion Zone and Shutdown Requirements.''

Ramp-Up

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. We infer on the basis of behavioral avoidance studies and observations that this measure results in some reduced potential for auditory injury and/or more severe behavioral reactions. Dunlop *et al.* (2016) studied the effect of ramp-up during a seismic airgun survey on migrating humpback whales, finding that although behavioral response indicating potential avoidance was observed, there was no evidence that ramp-up was more effective at causing aversion than was a constant source. Regardless, the majority of whale groups did avoid the source vessel at distances greater than the radius of most mitigation zones (Dunlop *et al.,* 2016). Although this measure is not proven and some arguments have been made that use of ramp-up may not have the desired effect of aversion (which is itself a potentially negative impact assumed to be better than the alternative), ramp-up remains a relatively low cost, common sense component of standard mitigation. Ramp-up is most likely to be effective for more sensitive species (*e.g.,* beaked whales) with known behavioral responses at greater distances from an acoustic source (*e.g.,* Tyack *et al.,* 2011; DeRuiter *et al.,* 2013; Miller *et al.,* 2015).

The ramp-up procedure involves a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved. Ramp-up is required at all times as part of the activation of the acoustic source (including source tests; see ''Miscellaneous Protocols'' for more detail) and may occur at times of poor visibility, assuming appropriate acoustic monitoring with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation should only occur at night where operational planning cannot reasonably avoid such circumstances. For example, a nighttime initial ramp-up following port departure is reasonably avoidable and may not occur. Ramp-up may occur at night following acoustic source deactivation due to line turn or mechanical difficulty. The operator must notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.

Ramp-up procedures follow the recommendations of IAGC (2015). Ramp-up would begin by activating a single airgun (*i.e.,* array element) of the smallest volume in the array. Ramp-up continues in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Total duration should be approximately 20 minutes. There will generally be one stage in which doubling the number of elements is not possible because the total number is not even. This should be the last stage of the ramp-up sequence. These requirements may be modified on the basis of any new information presented that justifies a different protocol. The operator must provide information to the PSO documenting that appropriate procedures were followed. Ramp-ups should be scheduled so as to minimize the time spent with source activated prior to reaching the designated run-in. We adopt this approach to ramp-up (increments of array elements) because it is relatively simple to implement for the operator as compared with more complex schemes involving activation by increments of array volume, or activation on the basis of element location or size. Such approaches may also be more likely to result in irregular leaps in sound output due to variations in size between individual elements within an array and their geometric interaction as more elements are recruited. It may be argued whether smooth incremental increase is necessary, but stronger aversion than is necessary should be avoided. The approach proposed here is intended to ensure a perceptible increase in sound output per increment while employing increments that produce similar degrees of increase at each step.

PSOs must monitor a 1,000-m buffer zone for a minimum of 30 minutes prior to ramp-up (*i.e.,* pre-clearance). The pre-clearance period may occur during any vessel activity (*i.e.,* transit, line turn). Ramp-up should be planned to occur during periods of good visibility when possible; operators should not target the period just after visual PSOs have gone off duty. Following deactivation of the source for reasons other than mitigation, the operator must communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up. Any suspected patterns of abuse should be reported by the lead PSO and would be investigated by NMFS. Ramp-up may not be initiated if any marine mammal (including small delphinoids) is within the designated buffer zone. If a marine mammal is observed within the buffer zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the buffer zone or until an additional time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species). PSOs will monitor the buffer zone during ramp-up, and ramp-up must cease and the source shut down upon observation of marine mammals within or approaching the buffer zone.

Exclusion Zone and Shutdown Requirements

An exclusion zone is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce potential for certain outcomes, *e.g.,* auditory injury,

disruption of critical behaviors. The PSOs must establish a minimum exclusion zone with a 500 m radius as a perimeter around the airgun array (rather than being centered on the array or around the vessel itself). If a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source must be shut down (*i.e.,* power to the acoustic source must be immediately turned off). If a marine mammal is detected acoustically, the acoustic source must be shut down, unless the PAM operator is confident that the animal detected is outside the exclusion zone or that the detected species is not subject to the shutdown requirement (see below).

This shutdown requirement is in place for all marine mammals, with the exception of small delphinoids under certain circumstances. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins—*Steno, Tursiops, Stenella, Delphinus, Lagenodelphis,* and *Lagenorhynchus* (see Table 4)—and only applies if the animals are traveling, including approaching the vessel. If, for example, an animal or group of animals is stationary for some reason (*e.g.,* feeding) and the source vessel approaches the animals, the shutdown requirement applies. An animal with sufficient incentive to remain in an area rather than avoid an otherwise aversive stimulus could either incur auditory injury or disruption of important behavior. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, shutdown must be implemented. We do not require that a PSO determine the intent of the animal(s)—an inherently subjective proposition—but simply whether any potential intersection of the animal with the 500-m exclusion zone would be caused due to the vessel's approach towards relatively stationary animals.

We propose this small delphinoid exception because a shutdown requirement for small delphinoids under all circumstances is of known concern regarding practicability for the applicant due to increased shutdowns, without likely commensurate benefit for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described below, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift). Please see ''Potential Effects of the Specified Activity on Marine Mammals'' later in this document for further discussion of sound metrics and thresholds and marine mammal hearing. A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The increased shutdowns resulting from such a measure would require source vessels to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total array of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

BOEM's PEIS (BOEM, 2014a) provided modeling results for auditory injury zones on the basis of auditory injury criteria described by Southall *et al.* (2007). These zones were less than 10 m on the basis of maximum peak pressure, and a maximum of 18 m on the basis of cumulative sound exposure level (including application of relevant M-weighting filters). However, the recent finalization of NMFS's new technical acoustic guidance made these predictions irrelevant (NMFS, 2016). We calculated potential radial distances to auditory injury zones on the basis of maximum peak pressure using values provided by the applicants (Table 1) and assuming a simple model of spherical spreading propagation. These are as follows: Low-frequency cetaceans, 50–224 m; mid-frequency cetaceans, 14–63 m; and high-frequency cetaceans, 355–1,585 m. The 500-m radial distance of the standard exclusion zone is intended to be precautionary in the sense that it would be expected to contain sound exceeding peak pressure injury criteria for all hearing groups other than high-frequency cetaceans, while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

An appropriate exclusion zone based on cumulative sound exposure level (cSEL) criteria would be dependent on the animal's applied hearing range and how that overlaps with the frequencies produced by the sound source of interest (*i.e.,* via marine mammal auditory weighting functions) (NMFS, 2016), and may be larger in some cases than the zones calculated on the basis of the peak pressure thresholds (and larger than 500 m) depending on the species in question and the characteristics of the specific airgun array. In particular, it is likely that exclusion zone radii would be larger for low-frequency cetaceans, because their most susceptible hearing range overlaps the low frequencies produced by airguns, but that the zones would remain very small for mid-frequency cetaceans (*i.e.,* including the ''small delphinoids'' described above), whose range of best hearing largely does not overlap with frequencies produced by airguns. In order to more realistically incorporate the technical guidance's weighting functions over a seismic array's full acoustic band, we obtained unweighted spectrum data (modeled in 1 Hz bands) for a reasonably equivalent acoustic source (*i.e.,* a 36-airgun array with total volume of 6,600 in^3. Using these data, we made adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. We then converted these adjusted/weighted spectrum levels to pressures (micropascals) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within NMFS's

User Spreadsheet (*i.e.,* override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation, a source velocity of 4.5 kn, shot intervals specified by the applicants, and pulse duration of 100 ms, we then calculated potential radial distances to auditory injury zones. These distances were smaller than those calculated on the basis of the peak pressure criterion, with the exception of the low-frequency cetacean hearing group (calculated zones range from 80–4,766 m). Therefore, our proposed 500-m exclusion zone contains the entirety of any potential injury zone for mid-frequency cetaceans, while the zones within which injury could occur may be larger for high-frequency cetaceans (on the basis of peak pressure and depending on the specific array) and for low-frequency cetaceans (on the basis of cumulative sound exposure). Only three species of high-frequency cetacean could occur in the proposed survey areas: the harbor porpoise and two species of the Family Kogiidae. Harbor porpoise are expected to occur rarely and only in the northern portion of the survey area. However, we propose a shutdown measure for *Kogia* spp. to address these potential injury concerns (described later in this section).

However, it is important to note that consideration of exclusion zone distances is inherently an essentially instantaneous proposition—a rule or set of rules that requires mitigation action upon detection of an animal. This indicates that consideration of peak pressure thresholds is most relevant, as compared with cumulative sound exposure level thresholds, as the latter requires that an animal accumulate some level of sound energy exposure over some period of time (*e.g.,* 24 hours). A PSO aboard a mobile source will typically have no ability to monitor an animal's position relative to the acoustic source over relevant time periods for purposes of understanding whether auditory injury is likely to occur on the basis of cumulative sound exposure and, therefore, whether action should be taken to avoid such potential. Therefore, definition of an exclusion zone based on cSEL thresholds is of questionable relevance given relative motion of the source and receiver (*i.e.,* the animal). Cumulative SEL thresholds are likely more relevant for purposes of modeling the potential for auditory injury than they are for informing real-time mitigation. We recognize the importance of the accumulation of sound energy to an understanding of the potential for auditory injury and that it is likely that, at least for low-frequency and high-frequency cetaceans, some potential auditory injury is likely impossible to mitigate and should be considered for authorization.

In summary, our intent in prescribing a standard exclusion zone distance is to (1) encompass zones for most species within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the exclusion zone; and (4) to define a distance within which detection probabilities are reasonably high for most species under typical conditions. Our use of 500 m as the zone is not based directly on any quantitative understanding of the range at which auditory injury would be entirely precluded or any range specifically related to disruption of behavioral patterns. Rather, we believe it is a reasonable combination of factors. This zone would contain all potential auditory injury for mid-frequency cetaceans, would contain all potential auditory injury for both low- and mid-frequency cetaceans as assessed against peak pressure thresholds (NMFS, 2016), and has been proven as a feasible measure through past implementation by operators in the Gulf of Mexico (GOM; as regulated by BOEM pursuant to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331–1356)). In summary, a practicable criterion such as this has the advantage of familiarity and simplicity while still providing in most cases a zone larger than relevant auditory injury zones, given realistic movement of source and receiver. Increased shutdowns, without a firm idea of the outcome the measure seeks to avoid, simply displace seismic activity in time and increase the total duration of acoustic influence as well as total sound energy in the water (due to additional ramp-up and overlap where data acquisition was interrupted).

Shutdown of the acoustic source is also required (at any distance) in other circumstances:

- Upon observation of a right whale at any distance. Recent data concerning the North Atlantic right whale, one of the most endangered whale species (Best *et al.,* 2001), indicate uncertainty regarding the population's recovery and a possibility of decline (Kraus *et al.,* 2005; Waring *et al.,* 2016; Pettis and Hamilton, 2016). We believe it appropriate to eliminate potential effects to individual right whales to the extent possible.
- For TGS only, due to a high predicted amount of exposures (Table 10), we propose that shutdown be required upon observation of a fin whale at any distance. If the observed fin whale is within the behavioral harassment zone, it would still be considered to have experienced harassment, but by immediately shutting down the acoustic source the duration of harassment is minimized and the significance of the harassment event reduced as much as possible. This measure is not proposed for implementation by Spectrum, ION, CGG, or Western.
- Upon observation of a large whale (*i.e.,* sperm whale or any baleen whale) with calf at any distance, with ''calf'' defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult. Disturbance of cow-calf pairs, for example, could potentially result in separation of vulnerable calves from adults. Given the endangered status of most large whale species and the difficulty of correctly identifying some rorquals at greater distances, as well as the functional sensitivity of the mysticete whales to frequencies associated with the subject geophysical survey activity, we believe this measure is necessary.
- Upon observation of a diving sperm whale at any distance centered on the forward track of the source vessel. Disturbance of deep-diving species such as sperm whales could result in avoidance behavior such as diving and, given their diving capabilities, it is possible that the vessel's course could take it closer to the submerged animals. As noted by Weir and Dolman (2007), a whale diving ahead of the source vessel within 2 km may remain on the vessel trackline until the ship approaches the whale's position before beginning horizontal movement. If undetected by PAM, it is possible that a shutdown might not be triggered and a severe behavioral response caused.
- Upon any observation (visual or acoustic) of a beaked whale or *Kogia* spp. Similar to the sperm whale measure described above, these species are deep divers and it is possible that disturbance could provoke a severe behavioral response leading to injury. Unlike the sperm whale, we recognize that there are generally low detection probabilities for beaked whales and *Kogia* spp., meaning that many animals of these species may go undetected. For

example, Barlow and Gisiner (2006) predict a roughly 24–48 percent reduction in the probability of detecting beaked whales during seismic mitigation monitoring efforts as compared with typical research survey efforts (Barlow (1999) estimates such probabilities at 0.23 to 0.45 for Cuvier's and Mesoplodont beaked whales, respectively). Similar detection probabilities have been noted for *Kogia* spp., though they typically travel in smaller groups and are less vocal, thus making detection more difficult (Barlow and Forney, 2007). As discussed later in this document (see ''Estimated Take by Incidental Harassment''), there are high levels of predicted exposures for beaked whales in particular. Because it is likely that only a small proportion of beaked whales and *Kogia* spp. potentially affected by the proposed surveys would actually be detected, it is important to avoid potential impacts when possible. Additionally for *Kogia* spp.—the one species of high-frequency cetacean likely to be encountered—auditory injury zones relative to peak pressure thresholds may range from approximately 350–1,500 m from the acoustic source, depending on the specific array characteristics (NMFS, 2016).

• Upon observation of an aggregation of marine mammals of any species that does not appear to be traveling. Under these circumstances, we assume that the animals are engaged in some important behavior (*e.g.,* feeding, socializing) that should not be disturbed. By convention, we define an aggregation as six or more animals. This definition may be modified on the basis of any new information presented that justifies a different assumption.

Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source (visual PSOs on duty should be in agreement on the need for delay or shutdown before requiring such action). When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch; hand-held UHF radios are recommended. When both visual PSOs and PAM operators are on duty, all detections must be immediately communicated to the remainder of the on-duty team for potential verification of visual observations by the PAM operator or of acoustic detections by visual PSOs and initiation of dialogue as necessary. When there is certainty regarding the need for mitigation action on the basis of either visual or acoustic detection alone, the relevant PSO(s) must call for such action immediately. When only the PAM operator is on duty and a detection is made, if there is uncertainty regarding species identification or distance to the vocalizing animal(s), the acoustic source must be shut down as a precaution.

Upon implementation of shutdown, the source may be reactivated after the animal(s) has been observed exiting the exclusion zone or following a 30-minute clearance period with no further observation of the animal(s). Where there is no relevant zone (*e.g.,* shutdowns at any distance), a 30-minute clearance period must be observed following the last observation of the animal(s). We recognize that BOEM may require a longer clearance period (*e.g.,* 60 minutes). However, at typical survey speed of approximately 4.5 kn, the vessel would cover greater than 4 km during the 30-minute clearance period. Although some deep-diving species are capable of remaining submerged for periods up to an hour, it is unlikely that they would do so both while experiencing potential adverse reaction to the acoustic stimulus and remaining within the exclusion zone of the moving vessel. Extending the clearance period would not appreciably increase the likelihood of detecting the animals prior to reactivating the acoustic source.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 minutes), it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the exclusion zone and no acoustic detections have occurred. We define ''brief periods'' in keeping with other clearance watch periods and to avoid unnecessary complexity in protocols for PSOs. For any longer shutdown (*e.g.,* during line turns), pre-clearance watch and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required but if the shutdown period was brief and constant observation maintained, pre-clearance watch is not required.

Power-Down

Power-down can be used either as a reverse ramp-up or may simply involve reducing the array to a single element or ''mitigation source,'' and has been allowed in past MMPA authorizations as a substitute for full shutdown. We address use of a mitigation source below. In a power-down scenario, it is assumed that turning off power to individual array elements reduces the size of the ensonified area such that an observed animal is then outside some designated area. However, we have no information as to the effect of powering down the array on the resulting sound field. In 2012, NMFS and BOEM held a monitoring and mitigation workshop focused on seismic survey activity. Industry representatives indicated that the end result may ultimately be increased sound input to the marine environment due to the need to re-shoot the trackline to prevent gaps in data acquisition (unpublished workshop report, 2012). For this reason and because a power-down may not actually be useful, our proposal requires full shutdown in all applicable circumstances; power-down is not allowed.

Mitigation Source

Mitigation sources may be separate individual airguns or may be an airgun of the smallest volume in the array, and are often used when the full array is not being used (*e.g.,* during line turns) in order to allow ramp-up during poor visibility. The general premise is that this lower-intensity source, if operated continuously, would be sufficiently aversive to marine mammals to ensure that they are not within an exclusion zone, and therefore, ramp-up may occur at times when pre-clearance visual watch is minimally effective. There is no information to suggest that this is an effective protective strategy, yet we are certain that this technique involves input of extraneous sound energy into the marine environment, even when use of the mitigation source is limited to some maximum time period. For these reasons, we do not believe use of the mitigation source is appropriate and do not propose to allow its use. However, as noted above, ramp-up may occur under periods of poor visibility assuming that no acoustic or visual detections are made during a 30-minute pre-clearance period. This is a change from how mitigation sources have been considered in the past in that the visual pre-clearance period is typically assumed to be highly effective during good visibility conditions and viewed as critical to avoiding auditory injury and, therefore, maintaining some likelihood of aversion through use of mitigation sources during poor visibility conditions is valuable.

In light of the available information, we think it more appropriate to acknowledge the limitations of visual observations—even under good

conditions, not all animals will be observed and cryptic species may not be observed at all—and recognize that while visual observation is a common sense mitigation measure its presence should not be determinative of when survey effort may occur. Given the lack of proven efficacy of visual observation in preventing auditory injury, its absence should not imply such potentially detrimental impacts on marine mammals, nor should use of a mitigation source be deemed a sensible substitute component of seismic mitigation protocols. We also believe that consideration of mitigation sources in the past has reflected an outdated balance, in which the possible prevention of relatively few instances of auditory injury is outweighed by many more instances of unnecessary behavioral disturbance of animals and degradation of acoustic habitat.

Miscellaneous Protocols

The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source should be avoided. Firing of the acoustic source at any volume above the stated production volume is not authorized for these proposed IHAs; the operator must provide information to the lead PSO at regular intervals confirming the firing volume.

Testing of the acoustic source involving all elements requires normal mitigation protocols (*e.g.,* ramp-up). Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance.

We encourage the applicant companies and operators to pursue the following objectives in designing, tuning, and operating acoustic sources: (1) Use the minimum amount of energy necessary to achieve operational objectives (*i.e.,* lowest practicable source level); (2) minimize horizontal propagation of sound energy; and (3) minimize the amount of energy at frequencies above those necessary for the purpose of the survey. However, we are not aware of available specific measures by which to achieve such certifications. In fact, BOEM recently announced that an expert panel convened to determine whether it would be feasible to develop standards to determine a lowest practicable source level has determined that it would not be reasonable or practicable to develop such metrics (see Appendix L in BOEM, 2016b). Minimizing production of sound at frequencies higher than are necessary would likely require design, testing, and use of wholly different airguns than are proposed for use by the applicants. At minimum, notified operational capacity (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be noticed to the PSO(s) on duty and fully documented for reporting. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

There has been some attention paid to the establishment of minimum separation distances between operating source vessels, and BOEM may require a minimum 40-km geographic separation distance (BOEM, 2014b). The premise regarding this measure is either to provide a relatively noise-free corridor between vessels conducting simultaneous surveys such that animals may pass through rather than traveling larger distances to go around the source vessels or to reduce the cumulative sound exposure for an animal in a given location. There is no information supporting the effectiveness of this measure, and participants in a 2012 monitoring and mitigation workshop focused on seismic survey activity held by NMFS and BOEM were skeptical regarding potential efficacy of this measure (unpublished workshop report, 2012). Unintended consequences were a concern of some participants, including the possibility that converging sound fields could confuse animals and/or prevent egress from an area. In fact, it may be more effective as a protective measure to group acoustic sources as closely together as possible, in which case the SEL exposure would not be appreciably louder and an animal would have a better chance of avoiding exposure than through the supposed corridor (thus also potentially shortening total duration of sound exposure).

The desired effect of such a measure is too speculative and would impose additional burden on applicants. Therefore, we do not propose to require any minimum separation distance between source vessels. Operators do typically maintain a minimum separation of about 17.5 km between concurrent surveys to avoid interference (*i.e.,* overlapping reflections received from multiple source arrays) (BOEM, 2014a). As noted previously, TGS (the only company proposing to use two source vessels) plans to maintain a minimum separation of approximately 100 km between their own source vessels.

Closure Areas

Coastal Restriction—No seismic survey effort may occur within 30 km of the coast. The intent of this restriction is to provide additional protection for coastal stocks of bottlenose dolphin, all of which are designated as depleted under the MMPA because they were determined to be below their optimum sustainable population level (*i.e.,* the number of animals that will result in the maximum productivity of the population, keeping in mind the carrying capacity of their ecosystem). Already designated as depleted, an Unusual Mortality Event (UME) affected bottlenose dolphins along the Atlantic coast, from New York to Florida, from 2013–15. Genetic analyses performed to date indicate that 99 percent of dolphins impacted were of the coastal ecotype, which may be expected to typically occur within 20 km of the coast. A 10 km buffer is provided to encompass the area within which sound exceeding 160 dB rms would reasonably be expected to occur (see additional discussion in next section). Further discussion of this UME is provided under ''Description of Marine Mammals in the Area of the Specified Activity,'' later in this document.

The coastal form of bottlenose dolphin is known to occur further offshore than 20 km, but available information suggests that exclusion of harassing sound from a 20 km coastal zone would avoid the vast majority of impacts. There is generally a discontinuity in bottlenose dolphin distribution between nearshore areas inhabited by coastal ecotype dolphins and the deeper offshore waters inhabited by offshore ecotype dolphins (Kenney, 1990; Roberts *et al.,* 2016), with some possibility that this discontinuity represents habitat partitioning between bottlenose dolphins and Atlantic spotted dolphins (which occur in high density on the shelf in areas where there is generally low density of bottlenose dolphin). The separation between offshore and coastal morphotypes varies depending on location and season, with the ranges overlapping to some degree south of Cape Hatteras. Coastwide, systematic biopsy collection surveys were conducted during the summer and winter to evaluate the degree of spatial overlap between the two morphotypes. North of Cape Lookout, North Carolina, there was a clear discontinuity with coastal ecotype dolphins found in waters less than 20 m depth and offshore ecotype dolphins found in waters greater than 40 m depth. South of Cape Lookout, spatial overlap was

found although the probability of a sampled group being from the coastal ecotype decreased with increasing depth (Garrison *et al.,* 2003). Prior to these surveys, coastal ecotype dolphins were provisionally assumed to occur within a spatial boundary of 27 km from shore for the region south of Cape Hatteras during winter and a boundary of 12 km from shore for the region north of Cape Hatteras during summer (Garrison, 2001 in Garrison *et al.,* 2003). Here, we adopt a coastwide 20 km spatial boundary for simplicity and under the assumption that it would contain the vast majority of coastal bottlenose dolphins.

Proposal of this measure should not be interpreted as NMFS's determination that harassment of coastal bottlenose dolphins cannot be authorized. However, when considering the likely benefit to the species against the impact to applicants, we believe that inclusion of this measure is warranted. Approximately 1,650 dolphin carcasses were recovered during the UME, and it is likely that many more dolphins died whose carcasses were not recovered. Considering just the known dead could represent greater than five percent of the pre-UME abundance for all coastal ecotype dolphins within the affected area. Ongoing areas of research related to the UME include understanding its impacts on the status of the affected stocks, as well as continuing monitoring and modeling designed to inform understanding of impacts on the surviving population. Given this uncertainty, a precautionary approach is warranted. We note that three applicants, Spectrum, CGG, and Western, do not propose to conduct survey effort within 30 km of the coast, and effort within 30 km for the other two applicants would represent a small fraction of overall survey effort.

North Atlantic Right Whale—We propose seasonal restriction of survey effort such that particular areas of expected importance for North Atlantic right whales are not ensonified by levels of sound expected to result in behavioral harassment, including designated critical habitat, vessel speed limit seasonal management areas (SMAs), a coastal strip containing SMAs, and vessel speed limit dynamic management areas (DMAs). Although right whales may also use areas farther offshore, these areas are expected to provide substantial protection of right whales within the migratory corridor and calving and nursery grounds and, when coupled with the absolute shutdown provision described previously for right whales, may reasonably be expected to eliminate most potential for behavioral harassment of right whales.

The North Atlantic right whale was severely depleted by historical whaling, and currently has a small population abundance (*i.e.,* less than 500 individuals) that is considered to be extremely low relative to the optimum sustainable population (Waring *et al.,* 2016). Surveys in recent years have detected an important shift in habitat use patterns, with fewer whales observed in feeding areas and counts for calves and adults on the southeastern calving grounds the lowest recorded since those surveys began (Waring *et al.,* 2016). At the same time, the current estimate of the minimum number of whales alive (as described in NMFS's draft 2016 stock assessment report) suggests that abundance has declined. While the authors caution that this apparent decrease should be interpreted with caution and in conjunction with apparent shifts in habitat use, it is possible that the population has declined. An increased number of carcasses were recovered in 2004–05, including six adult females. Kraus *et al.* (2005) determined that this mortality rate increase would reduce population growth by approximately ten percent per year, a trend not detected in subsequent years. Furthermore, the current annual estimate of anthropogenic mortality is over five times the potential biological removal level (see ''Description of Marine Mammals in the Area of the Specified Activity'' for further discussion of these concepts). The small population size and low annual reproductive rate of right whales suggest that human sources of mortality may have a greater effect relative to population growth rates than for other whales (Waring *et al.,* 2016). Given these considerations, and the likelihood that any disturbance of right whales is consequential, here we take a precautionary approach to mitigation.

Mid-Atlantic SMAs for vessel speed limits are in effect from November 1 through April 30, while southeast SMAs are in effect from November 15 through April 15 (see 50 CFR 224.105). However, as a precautionary approach all areas discussed here for proposed mitigation would be in effect from November 1 through April 30. Because we intend to use these areas to reduce the likelihood of exposing right whales to noise from airgun arrays that might result in harassment, we require that source vessels maintain a minimum standoff of 10 km from the area. Sound propagation modeling results provided for a notional large airgun array in BOEM's PEIS indicate that a 10 km distance would likely contain received levels of sound exceeding 160 dB rms under a wide variety of conditions (*e.g.,* 21 scenarios encompassing four depth regimes, four seasons, two bottom types). See Appendix D of BOEM's PEIS for more detail. The 95 percent ranges (*i.e.,* the radius of a circle encompassing 95 percent of grid points equal to or greater than the 160 dB threshold value) provided in Table D–22 of BOEM's PEIS range from 4,959–9,122 m, with mean of 6,838 m. Restricting scenario results to fall/winter and water depths <1,000 m reduces the number of relevant scenarios to six, with the range of radial distances from 8,083–8,896 m (mean of 8,454 m).

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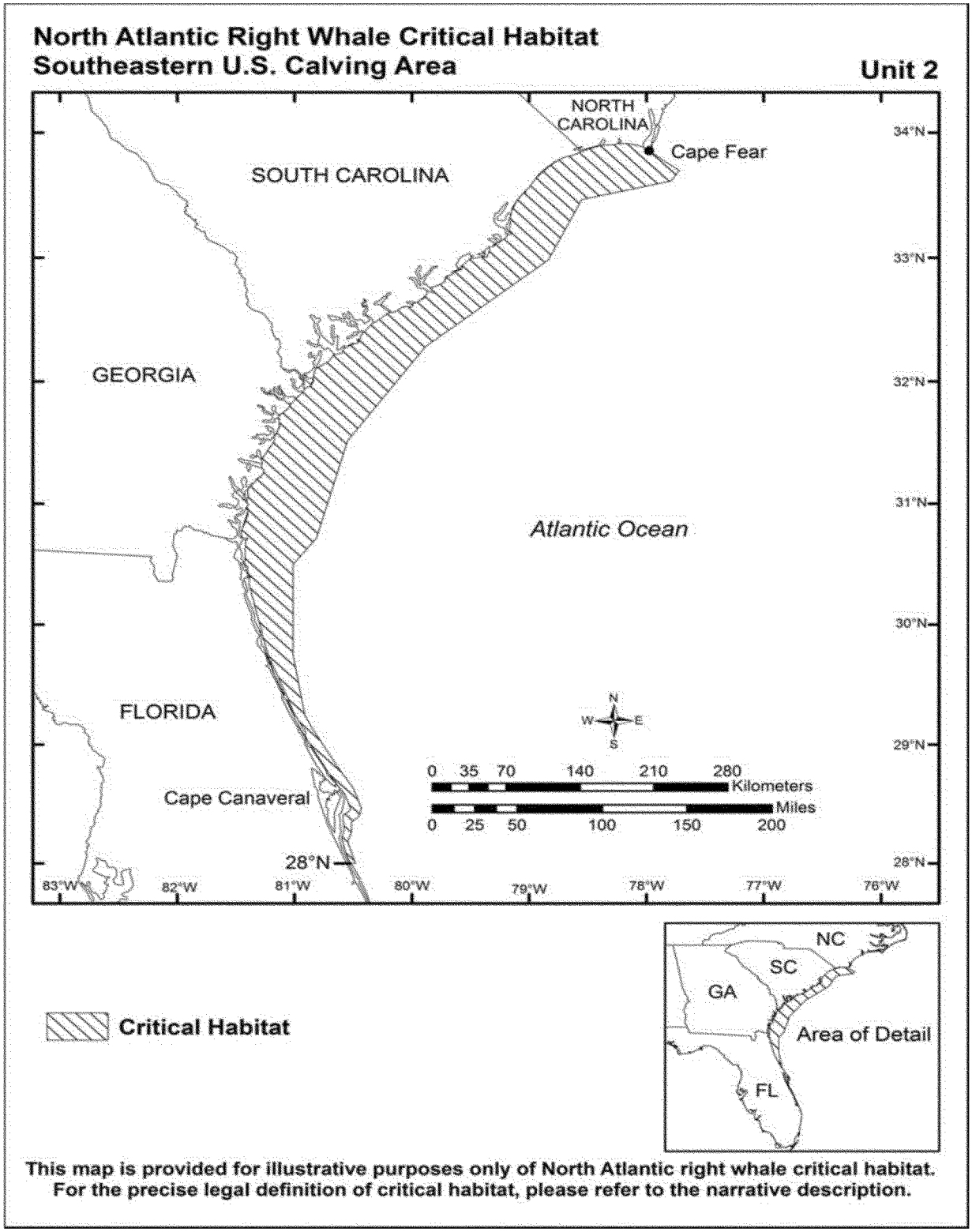

Figure 2. North Atlantic Right Whale Critical Habitat, Southeast U.S.

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The portion of critical habitat within the proposed survey area includes nearshore and offshore waters of the southeastern U.S., extending from Cape Fear, North Carolina south to 28° N. The specific area designated as critical habitat, as defined by regulation (81 FR 4838; January 27, 2016), is demarcated by rhumb lines connecting the specific points identified in Table 2. This area is depicted in Figure 2, and the restriction on survey effort within 10 km of this area would be in effect from November

through April, when right whales are known to use the area.

A coastal strip containing all SMAs would also be avoided by a minimum standoff distance of 10 km, as would DMAs. These are areas in which right whales are likely to be present when such areas are in effect; mandatory or voluntary speed restrictions for certain vessels are in place in these areas respectively when in effect to reduce the risk of ship strike. Because these areas are intended to reduce the risk of ship strike involving right whales, they are designated in consideration of both right whale presence during migratory periods and commercial shipping traffic. Our concern is not limited to ship strike; therefore the standoff areas based on the SMAs are extended to a continuous coastal strip with a 10 km buffer. Mid-Atlantic SMAs (from Delaware to northern Georgia) are intended to protect whales on the migratory route and are generally defined as a 20 nmi (37 km) radial distance around the entrance to certain ports. Therefore, no survey effort may occur within 47 km of the coast between November and April. This strip is superseded where either designated critical habitat or the southeast SMA provides a larger restricted area. The southeast SMA, intended to protect whales on the calving and nursery grounds, includes the area bounded to the north by 31°27′ N., to the south by 29°45′ N., and to the east by 80°51′36″ W. No survey effort may occur within 10 km of this area between November and April. The combined area of our proposed restriction—composed of the greater of designated critical habitat, the 20 nmi coastal strip, and the southeastern SMA (all buffered by 10 km)—is depicted in Figure 3.

TABLE 2—BOUNDARIES OF DESIGNATED CRITICAL HABITAT FOR NORTH ATLANTIC RIGHT WHALES

Latitude	Longitude	Latitude	Longitude
33°51′ N.	At shoreline	29°08′ N.	80°51′ W.
33°42′ N.	77°43′ W.	28°50′ N.	80°39′ W.
33°37′ N.	77°47′ W.	28°38′ N.	80°30′ W.
33°28′ N.	78°33′ W.	28°28′ N.	80°26′ W.
32°59′ N.	78°50′ W.	28°24′ N.	80°27′ W.
32°17′ N.	79°53′ W.	28°21′ N.	80°31′ W.
31°31′ N.	80°33′ W.	28°16′ N.	80°31′ W.
30°43′ N.	80°49′ W.	28°11′ N.	80°33′ W.
30°30′ N.	81°01′ W.	28°00′ N.	80°29′ W.
29°45′ N.	81°01′ W.	28°00′ N.	At shoreline.
29°15′ N.	80°55′ W.		

Reproduced from 50 CFR 226.203(b)(2).

DMAs are also associated with a scheme established by the final rule for vessel speed limits (73 FR 60173; October 10, 2008; extended by 78 FR 73726; December 9, 2013) to reduce the risk of ship strike for right whales. In association with those regulations, NMFS established a program whereby vessels are requested, but not required, to abide by speed restrictions or avoid locations when certain aggregations of right whales are detected outside SMAs. Generally, the DMA construct is intended to acknowledge that right whales can occur outside of areas where they predictably and consistently occur due to, *e.g.,* varying oceanographic conditions that dictate prey concentrations. NMFS establishes DMAs by surveying right whale habitat and, when a specific aggregation is sighted, creating a temporary zone (*i.e.,* DMA) around the aggregation. DMAs are in effect for 15 days when designated and automatically expire at the end of the period, but may be extended if whales are re-sighted in the same area.

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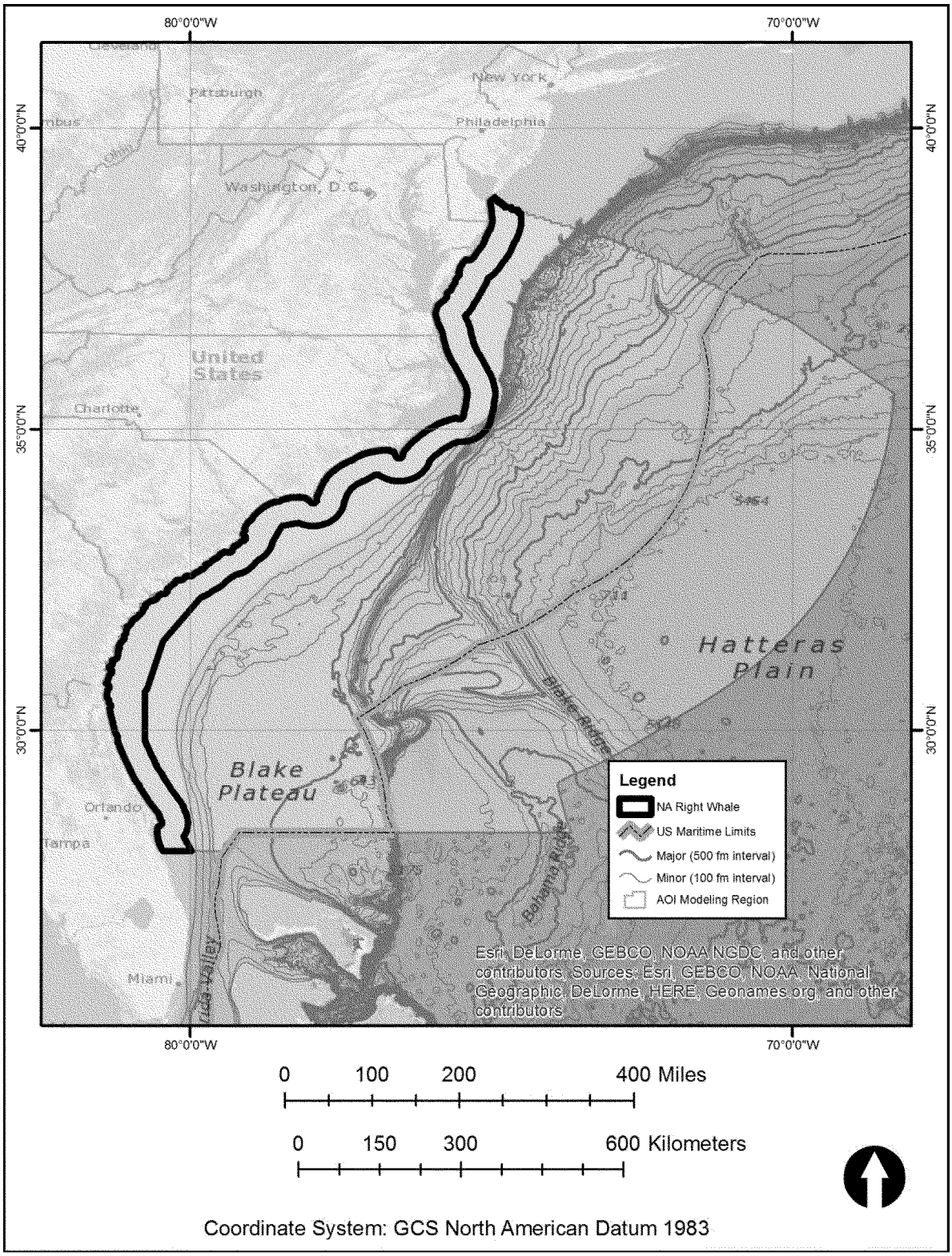

Figure 3. Proposed Time-area Restriction for North Atlantic Right Whale.

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Designation of DMAs follows certain protocols identified in 73 FR 60173 (October 10, 2008):

1. A circle with a radius of at least 3 nmi (5.6 km) is drawn around each observed group. This radius is adjusted for the number of right whales seen in the group such that the density of four right whales per 100 nmi^2 (185 km^2) is maintained. The length of the radius is determined by taking the inverse of the four right whales per 100 nmi^2 density (24 nmi^2 per whale). That figure is

equivalent to an effective radial distance of 3 nmi for a single right whale sighted, 4 nmi for two whales, 5 nmi for three whales, etc.

2. If any circle or group of contiguous circles includes three or more right whales, this core area and its surrounding waters become a candidate temporary zone. After NMFS identifies a core area containing three or more right whales, as described here, it will expand this initial core area to provide a buffer area in which the right whales could move and still be protected.

NMFS determines the extent of the DMA zone by:

3. Establishing a 15-nmi (27.8-km) radius from the sighting location used to draw a larger circular zone around each core area encompassing a concentration of right whales. The sighting location is the geographic center of all sightings on the first day of an event; and

4. Identifying latitude and longitude lines drawn outside but tangential to the circular buffer zone(s).

NMFS issues announcements of DMAs to mariners via its customary maritime communication media (*e.g.,* NOAA Weather radio, Web sites, email and fax distribution lists) and any other available media outlets. Information on the possibility of establishment of such zones is provided to mariners through written media such as *U.S. Coast Pilots* and *Notice to Mariners* including, in particular, information on the media mariners should monitor for notification of the establishment of a DMA. Upon notice via the above media of DMA designation, survey operators must cease operation if within 10 km of the boundary of a designated DMA and may not conduct survey operations within 10 km of a designated DMA during the period in which the DMA is active. It is the responsibility of the survey operators to monitor appropriate media and to be aware of designated DMAs.

Proposal of this measure should not be interpreted as NMFS's determination that harassment of right whales cannot be authorized. However, when considering the current status of the species, likely benefit of the measure to the species, and likely impact to applicants, we believe that inclusion of this measure is warranted.

Other Species—Predicted acoustic exposures are moderate to high for certain potentially affected marine mammal species (see Table 10) and, regardless of the absolute numbers of predicted exposures, the scope of proposed activities (*i.e.,* proposed survey activity throughout substantial portions of many species range and for substantial portions of the year) gives rise to concern regarding the impact on certain potentially affected stocks. Therefore, we take the necessary step of identifying additional spatiotemporal restrictions on survey effort, as described here (Figure 4 and Table 3). Our qualitative assessment leads us to believe that implementation of these measures is expected to provide both meaningful control on the numbers of animals affected as well as biologically meaningful benefit for the affected animals by restricting survey activity and the effects of the sound produced in areas of residency and/or preferred habitat that support higher densities for the stocks during substantial portions of the year.

The restrictions described here are primarily targeted towards protection of sperm whales, beaked whales (*i.e.,* Cuvier's beaked whale or *Mesoplodon* spp. but not the northern bottlenose whale; see ''Description of Marine Mammals in the Area of the Specified Activity''), Atlantic spotted dolphin, and pilot whales. For all four species or guilds, the amount of predicted exposures is moderate to high. For the Atlantic spotted dolphin, our impetus in delineating a restriction on survey effort is solely due to this high amount of predicted exposures to survey noise. For other species, the moderate to high amount of predicted exposures in conjunction with other contextual elements provides the impetus to develop appropriate restrictions. Beaked whales are considered to be a particularly acoustically sensitive species. The sperm whale is an endangered species, also considered to be acoustically sensitive and potentially subject to significant disturbance of important foraging behavior. Pilot whale populations in U.S. waters of the Atlantic are considered vulnerable due to high levels of mortality in commercial fisheries, and are therefore likely to be less resilient to other stressors, such as disturbance from the proposed surveys.

In some cases, we expect substantial subsidiary benefit for additional species that also find preferred habitat in the designated area of restriction. In particular, Area #5 (Figure 4), although delineated in order to specifically provide an area of anticipated benefit to beaked whales, sperm whales, and pilot whales, is expected to host a diverse cetacean fauna (*e.g.,* McAlarney *et al.,* 2015). Our analysis (described below) indicates that species most likely to derive subsidiary benefit from this time-area restriction include the bottlenose dolphin, Risso's dolphin, and common dolphin. For species with density predicted through stratified models, similar analysis is not possible and assumptions regarding potential benefit of time-area restrictions are based on known ecology of the species and sightings patterns and are less robust. Nevertheless, subsidiary benefit for Areas #2–4 (Figure 4) should be expected for species known to be present in these areas (*e.g.,* assumed affinity for slope/abyss areas off Cape Hatteras): *Kogia* spp., pantropical spotted dolphin, Clymene dolphin, and rough-toothed dolphin.

In order to consider potential restriction of survey effort in time and space, we considered the outputs of habitat-based predictive density models (Roberts *et al.,* 2016) as well as available information concerning focused marine mammal studies within the proposed survey areas, *e.g.,* photo-identification, telemetry, acoustic monitoring. The latter information was used primarily to provide verification for some of the areas and times considered, and helps to confirm that areas of high predicted density are in fact preferred habitat for these species. Please see ''Marine Mammal Density Information,'' later in this document, for a full description of the density models. We used the density model outputs by creating core abundance areas, *i.e.,* an area that contains some percentage of predicted abundance for a given species or species group. The purpose of a core abundance area is to represent the smallest area containing some percentage of the predicted abundance of each species. Summing all the cells (pixels) in the species distribution product gives the total predicted abundance. Core area is calculated by ranking cells by their abundance value from greatest to least, then summing cells with the highest abundance values until the total is equal to or greater than the specified percentage of the total predicted abundance. For example, if a 50 percent core abundance area is produced, half of the predicted abundance falls within the identified core area, and half occurs outside of it. In creating core abundance areas, we considered data outputs over the entire Atlantic coast scale rather than limiting to the proposed survey areas. This is appropriate because we are concerned with impacts to a stock as a whole, and therefore were interested in core abundance based on total predicted abundance rather than just abundance predicted over some subset of a stock's range. We were not able to consider core abundance areas for species with stratified models showing uniform density; however, this information informs us as to whether those species may receive subsidiary

benefit from a given time-area restriction.

To determine core abundance areas, we follow a three-step process:

- Determine the predicted total abundance of a species/time period by adding up all cells of the density raster (grid) for the species/time period. For the Roberts *et al.* (2016) density rasters, density is specified as the number of animals per 100 km^2 cell.
- Sort the cells of the species/time period density raster from highest density to the lowest.
- Sum and select the raster cells from highest to lowest until a certain percentage of the total abundance is reached.

The selected cells represent the smallest area that represents a given percentage of abundance. We created a range of core abundance areas for each species of interest, but ultimately determined that 25 percent core abundance area was appropriate in most cases for our purpose. The larger the percentage of abundance captured, the larger the area. Generally speaking, we found that 25 percent core abundance provided the best balance between the areas given by larger (impracticably large areas for purposes of restricting survey effort) and smaller (ineffective areas for purposes of providing meaningful protection) areas. However, for sperm whales, our analysis showed that the 25 percent core abundance area covered a large portion of slope waters in the northern mid-Atlantic region and, therefore, what we believe to be an impracticably large area for potential restriction of survey effort. Although sperm whales are broadly distributed on the slope throughout the year, at the five percent core abundance threshold we found that the model predictions indicate a relatively restricted area of preferred habitat across all seasons in the vicinity of the shelf break to the north of Cape Hatteras. This area, together with spatially separated canyon features contained within the 25 percent core abundance areas and previously identified as preferred habitat for beaked whales, form the basis for our proposed time-space restriction for sperm whales. Core abundance maps are provided online at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm.*

In summary, we propose the following closure areas (depicted in Figure 4):

- In order to protect coastal bottlenose dolphins, a 30-km coastal strip (20 km plus 10 km buffer) would be closed to use of the acoustic source year-round.
- An area proposed for protection of the North Atlantic right whale (Figure 3). The area is comprised of the furthest extent at any location of three distinct components: (1) A 47-km coastal strip (20-nmi plus 10 km buffer) throughout the entire Mid- and South Atlantic OCS planning areas; (2) designated critical habitat, buffered by 10 km; and (3) the designated southeastern seasonal management area, buffered by 10 km. This area would be closed to use of the acoustic source from November through April. Dynamic management areas (buffered by 10 km) are also closed to use of the acoustic source when in effect.

The 10-km buffer (intended to reasonably prevent sound output from the acoustic source exceeding received levels expected to result in behavioral harassment from entering the proposed closure areas) is built into the areas defined below and in Table 3. Therefore, we do not separately mention the addition of the buffer.

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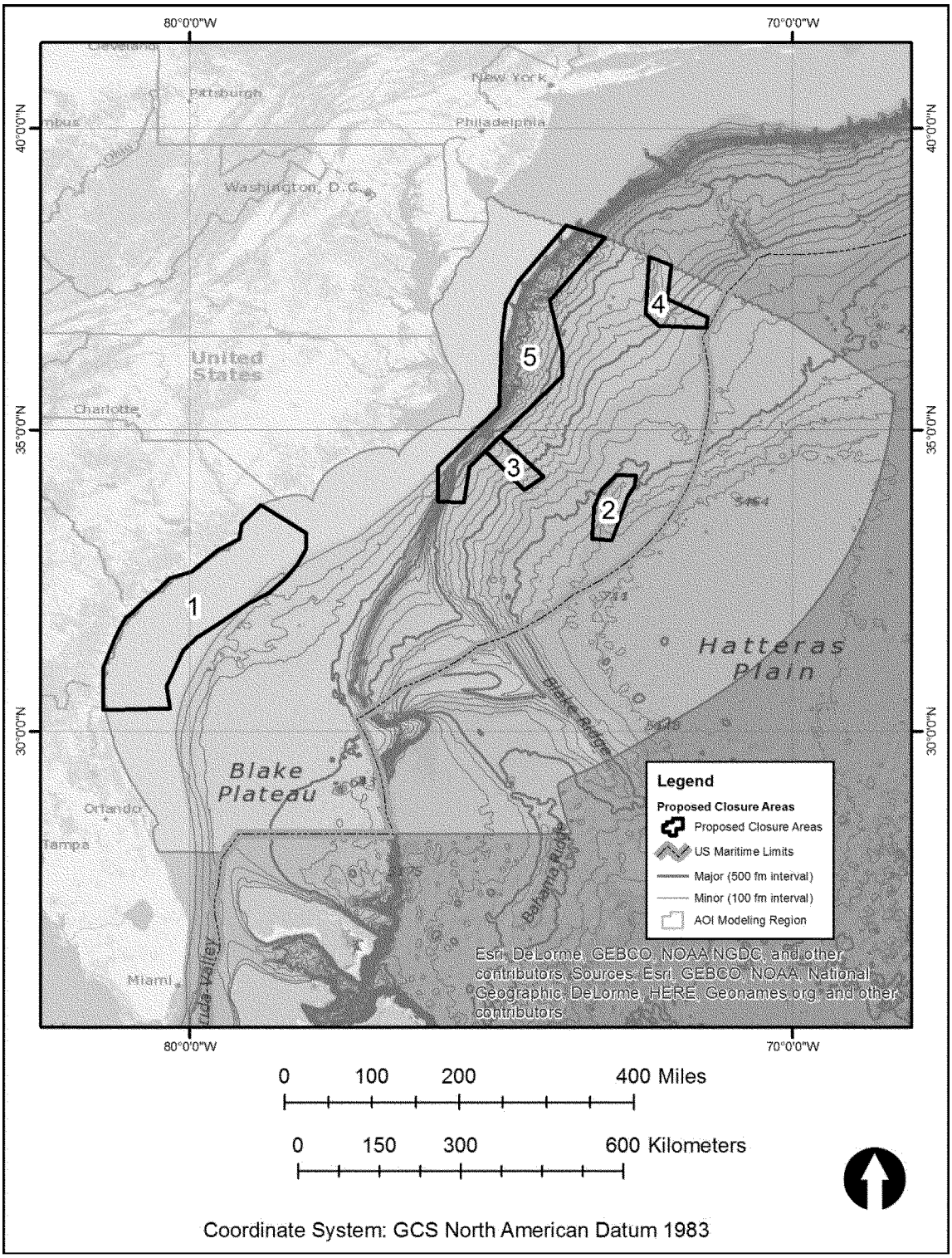

Figure 4. Proposed Time-area Restrictions.

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• An area proposed for protection of Atlantic spotted dolphin (Area #1, Figure 4). The area contains the on-shelf portion of a 25 percent core abundance area for the species, and is comprised of lines that demarcate the northern and southern extent of this area, connected by a line marking 100 km distance from shore (as indicated in Table 3). This area would be closed to use of the acoustic source from June through August. This restriction would not be required for ION or CGG.

• Deepwater canyon areas. Areas #2–4 (Figure 4) are proposed as defined in Table 3 and would be closed to use of

the acoustic source year-round. Although they may be protective of additional species (*e.g., Kogia* spp.), Area #2 is expected to be particularly beneficial for beaked whales and Areas #3–4 are expected to be particularly beneficial for both beaked whales and sperm whales.

• Shelf break off Cape Hatteras and to the north, including slope waters around ''The Point.'' Area #5 is proposed as defined in Table 3 and would be closed to use of the acoustic source from July through September. Although this closure is expected to be beneficial for a diverse species assemblage, Area #5 is expected to be particularly beneficial for beaked whales, sperm whales, and pilot whales.

Beaked Whale

Beaked whales are typically deep divers, foraging for mesopelagic squid and fish, and are often found in deep water near high-relief bathymetric features, such as slopes, canyons, and escarpments where these prey are found (*e.g.,* Madsen *et al.,* 2014; MacLeod and D'Amico, 2006; Moors-Murphy, 2014). Sightings of Cuvier's beaked whale are almost exclusively in the continental shelf edge and continental slope areas, while *Mesoplodon* spp. sightings have occurred principally along the shelf-edge and deeper oceanic waters (CETAP, 1982; Waring *et al.,* 1992; Tove, 1995; Waring *et al.,* 2001; Hamazaki, 2002; Palka, 2006; Waring *et al.,* 2014). Roberts *et al.* (2016)'s results suggest that beaked whales do not undertake large seasonal migrations, and are therefore associated with significant habitat features year-round or with some degree of residency (Roberts *et al.,* 2015l; Gowans *et al.,* 2000; MacLeod and D'Amico, 2006). In support of patterns seen in the density model outputs, MacLeod and D'Amico (2006) state that beaked whale occurrence is linked particularly to features such as slopes, canyons, escarpments and oceanic islands. Northern bottlenose whales and Sowerby's beaked whales were found to preferentially occur in a marine canyon rather than the neighboring shelf, slope and abyssal areas (Hooker *et al.,* 1999, 2002). Cuvier's beaked whales are also known to associate with canyons (D'Amico *et al.,* 2003; Williams *et al.,* 1999), and Blainville's beaked whales were also found to preferentially occur over the upper reaches of a canyon (MacLeod and Zuur, 2005). Sighting rates of beaked whales in the western North Atlantic are significantly higher within canyon areas than non-canyon areas (Waring *et al.,* 2001). It is possible, however, that such occurrence patterns are linked more strongly to oceanographic features influencing prey distribution, which may or may not be permanently linked to seabed topography (MacLeod and D'Amico, 2006).

Submarine canyons are important features of the shelf and slope region from Cape Hatteras to the north, with both major and minor canyons abundant in the region. Roberts *et al.* (2016) predicted beaked whale density at year-round temporal resolution, with model predictions showing concentrated distribution in deep waters over high-relief bathymetry where high prey density would be expected due to entrainment of nutrient-rich sediments and organic material (Moors-Murphy, 2014). Highest densities were predicted in areas along the continental slope and in and around submarine canyons (Roberts *et al.,* 2016). The core abundance area analysis highlighted three such submarine canyon areas as being of year-round importance to beaked whales (Areas #2–4, see Figure 4). Area #3 is centered on Hatteras Canyon, a major canyon system that cuts a deep valley across the upper continental rise before terminating on the lower rise. Area #2, in deeper water, encompasses the Hatteras Transverse Canyon (HTC). HTC is downslope of and fed by both Hatteras and Albemarle Canyons (which dissect the slope) and their channel extensions, as well as smaller unnamed canyons and canyon channels, and is bounded by the Hatteras Ridge, which is a major transverse barrier deflecting turbidity currents into the HTC (Gardner *et al.,* 2016). Area #4 is centered on a large, deepwater valley system that is fed by a complex series of canyons and gullies incising the slope between Hendrickson and Baltimore Canyons (note that the entire shelf break north of Cape Hatteras, including many of these canyons and gullies, is included in our Area #5 (Figure 4) which is discussed below). In delineating the actual area proposed for restriction on survey effort, we expanded from 10 x 10 km grid cells specifically predicted as being within the beaked whale 25 percent core abundance area to include adjacent cells that also cover the relevant bathymetric feature. Assuming that beaked whales are present in these areas, their use of these habitat areas would not be expected to be restricted within the feature and we delineate the proposed closure areas accordingly. We assume that beaked whales associate with these features year-round, and each of the three areas is proposed as a year-round closure.

Area #5 (Figure 4) was designed as a multi-species area, primarily focused on pilot whales, beaked whales, and sperm whales. This area is focused on a particularly dynamic and highly productive environment off of Cape Hatteras (sometimes referred to as ''Hatteras Corner'' or ''The Point'') and the shelf break environment running to the north (to the boundary of BOEM's Mid-Atlantic OCS planning area) and to the south. This environment off of Cape Hatteras is created through the confluence of multiple currents and water masses, including the Gulf Stream (SAFMC, 2003), over complex bottom topography and hosts a high density and diversity of cetaceans (*e.g.,* McAlarney *et al.,* 2015). For beaked whales, our core abundance area analysis predicts that the shelf break area running from The Point to the southern extent of Area #5 would be within the 25 percent core abundance area, while the remainder of the shelf break to the north would be within the 50 percent core abundance area. This finding is supported by passive acoustic monitoring effort, which detected echolocation signals from Cuvier's beaked whales consistently throughout the year (95 percent of 741 recording days across all seasons), suggesting that beaked whales are resident to this area (Stanistreet *et al.,* 2015). Gervais' beaked whales were detected more sporadically (33 percent of recording days). Monthly aerial surveys conducted from 2011–2014 in the same region, from shallow continental shelf waters across the continental shelf break and into deep pelagic waters, also detected beaked whales in all months of the year (McLellan *et al.,* 2015). All beaked whale sightings occurred along the continental shelf break. Baird *et al.* (2015) reported results from three tagged Cuvier's beaked whales, which largely remained in slope waters off the coasts of North Carolina, Virginia, and Maryland. Although this limited number of tags makes it difficult to draw conclusions, the authors hypothesize that the observed movements may be representative of a resident population.

Although beaked whales are likely present in this area year-round, there is significant overlap between this proposed restriction and the area of highest interest by the applicant companies. Therefore, we determined that practicability concerns dictate that we establish a temporal component to this closure rather than designate this area as a year-round closure (as is the case for Areas #2–4). Roberts *et al.* (2016) predicted density for pilot whales and beaked whales at year-round

temporal resolution; therefore, the output of those models does not help to designate a temporal aspect to this proposed restriction. However, the model produced for sperm whales predicts density at a monthly resolution and informed our delineation of temporal bounds for this closure. The model predicts the greatest density of sperm whales in this region from June through October, with the highest overall abundance predicted for July through September (Roberts *et al.,* 2015n). Therefore, we propose that Area #5 be in effect as a seasonal area closure from July through September.

Sperm Whale

Although sperm whales are one of the most widely distributed marine mammals, they are typically more abundant in areas of high primary productivity (Jaquet *et al.,* 1996) and thus may be expected to occur in greater numbers in areas where physiographic and oceanographic features serve to aggregate prey (*e.g.,* squid). Sperm whales are in fact commonly associated with submarine canyons (Moors-Murphy, 2014) and, specifically in this region, have been found to be associated with canyons (Whitehead *et al.,* 1992), the north wall of the Gulf Stream (Waring *et al.,* 1993), and temperature fronts and warm-core eddies (Waring *et al.,* 2001; Griffin, 1999). Areas #3–4 (Figure 4), described above for beaked whales, were also identified as areas of high predicted density for sperm whales. Roberts *et al.* (2016) predicted sperm whale density at monthly temporal resolution, and core abundance analysis conducted at a monthly time-step predicts that Area #3 is of year-round importance for sperm whales, while Area #4 is within the sperm whale 25 percent core abundance area for seven months of the year (Jun-Dec). CETAP (1982) reported sightings of sperm whales north of Cape Hatteras off the shelf and along the shelf break during all four seasons, while acoustic monitoring detected sperm whales every month of the year off the shelf near Onslow Bay, North Carolina (Stanistreet *et al.,* 2012; Hodge and Read, 2014; Debich *et al.,* 2014; Hodge *et al.,* 2015).

As noted above, Area #5 (Figure 4) is a multi-species area, primarily focused on pilot whales, beaked whales, and sperm whales, and is proposed to be in effect from July through September. In particular, Area #5's ''bulge'' to the north and east of Cape Hatteras was indicated as high-density sperm whale habitat contained within the five percent core abundance area in all months, but as a larger area and with higher predicted density during July through September, as discussed above. During these months, the 25 percent core abundance area for sperm whales is predicted as covering a large swath of the region from the region of The Point off and to the south of Cape Hatteras north to the planning area boundary and including shelf break waters east over the entire slope and into abyssal waters in some locations. As described previously, due to the large size of this area, we based this component of Area #5 on the relevant portion of the five percent core abundance are for sperm whales. This area, predicted to host the highest density of sperm whales, was contiguous to and somewhat overlapping with the shelf break strip suggested by core abundance area analysis for beaked whales and pilot whales. We believe this reflects the appropriate balance between necessary protective measures for this species and practicability for the applicant companies, which would be severely restricted in their ability to survey the area of interest were our proposed closure larger in terms of either space or time.

Pilot Whale

Pilot whales are distributed primarily along the continental shelf edge, occupying areas of high relief or submerged banks, and are also associated with the Gulf Stream wall and thermal fronts along the shelf edge (Waring *et al.,* 2016). Roberts *et al.* (2016) predicted pilot whale density at year-round temporal resolution. High pilot whale density was predicted throughout the year at an area of the shelf break and continental slope north of where the Gulf Stream separates from the shelf at Cape Hatteras. Sightings were reported in this vicinity in nearly every month of the year (Roberts *et al.,* 2015c).The entire shelf break area from Cape Hatteras north to the boundary of the planning area was predicted as being within the pilot whale 25 percent core abundance area. However, within this predicted core abundance area, the region immediately offshore of the Cape Hatteras shelf break and to the north extending into waters over the slope was predicted as containing notably higher density of pilot whales. This area is retained within the core abundance area even when the threshold is reduced to 5 percent, indicating that it is one of the most important areas in the region for any species. These patterns are supported by observation, including telemetry. Thorne *et al.* (2015) tracked the movements of 18 short-finned pilot whales off Cape Hatteras between May and December 2014 (mean tag deployment of 57 days) and quantified their habitat use relative to environmental variables. Results showed that pilot whales have a strong affinity for the shelf break, with more than 90 percent of locations occurring within 20 km of the shelf break (*i.e.,* 1,000 m depth contour) and more than 65 percent occurring within 5 km of the shelf break, and highlight the importance of static habitat features for the species. As a result of similar tagging work, Foley *et al.* (2015) found that, despite long-distance movements, pilot whales displayed a high degree of site fidelity off Cape Hatteras. Intra- and inter-annual as well as intra- and inter-seasonal matches to an existing photo-identification catalog were made, and some individuals were matched over periods of up to eight years. The authors hypothesize that that the shelf break offshore of Cape Hatteras is an important area for this species, to which individuals return frequently. Area #5 (Figure 4) was designed accordingly to encompass these important pilot whale habitat areas and, as described previously, is proposed to be in effect from July through September.

Atlantic Spotted Dolphin

Atlantic spotted dolphins are widely distributed in tropical and warm temperate waters of the western North Atlantic, and regularly occur in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Payne *et al.,* 1984; Mullin and Fulling, 2003). Sightings have also been made along the north wall of the Gulf Stream and warm-core ring features (Waring *et al.,* 1992). This disjunct distribution may be due to the occurrence of two ecotypes of the species: A larger form that inhabits the continental shelf and is usually found inside or near the 200-m isobath and a smaller offshore form (Mullin and Fulling, 2003; Waring *et al.,* 2014). Morphometric, genetic, and acoustic data support the suggestion that two ecotypes inhabit this region (Baron *et al.,* 2008; Viricel and Rosel, 2014) and observational data are consistent with this distribution pattern. Existing data show a dense cluster of observations along the continental shelf between Florida and Virginia and a second, more dispersed cluster off the shelf and north of the Gulf Stream (north of Cape Hatteras) (Roberts *et al.,* 2015o). As would be expected from these patterns, results from Roberts *et al.* (2016) predict the following density pattern: Low near the shore, high in the mid-shelf, low near the shelf break, then higher again offshore.

Although there are no relevant considerations with regard to population context or specific stressors that lead us to develop mitigation focused on Atlantic spotted dolphins, the predicted amount of acoustic exposure for the species is among the highest for all species across three of the five applicant companies. Therefore, we believe it appropriate to delineate a time-area restriction for the sole purpose of reducing likely acoustic exposures for the species, for those three companies (*i.e.,* we propose that this restriction be implemented for Spectrum, TGS, and Western but not for CGG or ION). As noted above, observational data indicate that the area of likely highest density for Atlantic spotted dolphin is on-shelf south of Cape Hatteras. This is also an area of relatively little interest to the applicant companies (in contrast with the second area of relatively high density for Atlantic spotted dolphin, off the shelf to the north of the Gulf Stream). Our core abundance area analysis indeed suggests that the two areas comprise the 25 percent core abundance area for the species, with the on-shelf region roughly contained by the 100-m isobath offshore of Georgia and South Carolina. We thus delineate our proposed closure area by the northern and southern extent of the predicted on-shelf component of the 35 percent core abundance area, bounded by a line 100 km from shore (which roughly corresponds with the 100-m isobath). We assume that this may present a simpler, more practicable way for vessel operators to mark the area to be avoided, but invite public comment regarding operators' capacity to mark areas to be avoided using different methods (*e.g.,* coordinates, depth contours, specific distances from shore, shapefiles).

Our assumption here is that given the absence of other contextual factors demanding special protection of spotted dolphins, a seasonal restriction would be sufficient to guarantee that the species is afforded some protection from harassment in one of the areas most important for it. Because there is little information about the species migration patterns, and Roberts *et al.* (2016) predicted density at a year-round temporal resolution, we delineate the proposed closure on the basis of NMFS' observational data. Current shipboard observational data was collected during June-August 2011 (Waring *et al.,* 2014). Although Roberts *et al.* (2015o) suggest that monthly model results should not be relied upon, we note that these results do show likely highest abundance in this portion of the proposed survey areas in the summer months (June through September). Therefore, we propose that Area #1 be in effect from June through August.

TABLE 3—BOUNDARIES OF PROPOSED TIME-AREA RESTRICTIONS DEPICTED IN FIGURE 4

Area	Latitude	Longitude	Area	Latitude	Longitude
1	30° 20′ 50″ N.	At shoreline	4	36° 55′ 20″ N.	72° 26′ 18″ W.
1 [1]	30° 22′ 25″ N.	80° 19′ 55″ W.	4	37° 52′ 21″ N.	72° 22′ 31″ W.
1 [1]	33° 17′ 03″ N.	78° 04′ 00″ W.	4	37° 43′ 53″ N.	72° 00′ 32″ W.
1	33° 45′ 01″ N.	At shoreline	4	37° 43′ 54″ N.	72° 00′ 40″ W.
2	33° 31′ 16″ N.	72° 52′ 07″ W.	4	37° 09′ 52″ N.	72° 04′ 31″ W.
2	33° 10′ 05″ N.	72° 59′ 59″ W.	4	36° 52′ 01″ N.	71° 24′ 31″ W.
2	33° 11′ 23″ N.	73° 19′ 36″ W.	5	37° 08′ 30″ N.	74° 01′ 42″ W.
2	33° 43′ 34″ N.	73° 17′ 43″ W.	5	36° 15′ 12″ N.	73° 48′ 37″ W.
2	33° 59′ 43″ N.	73° 10′ 16″ W.	5	35° 53′ 14″ N.	73° 49′ 02″ W.
2	34° 15′ 10″ N.	72° 55′ 37″ W.	5	34° 23′ 07″ N.	75° 21′ 33″ W.
2	34° 14′ 02″ N.	72° 36′ 00″ W.	5	33° 47′ 37″ N.	75° 27′ 25″ W.
2	34° 03′ 33″ N.	72° 37′ 27″ W.	5	33° 48′ 31″ N.	75° 52′ 58″ W.
2	33° 53′ 00″ N.	72° 44′ 31″ W.	5	34° 23′ 57″ N.	75° 52′ 50″ W.
3	34° 13′ 21″ N.	74° 07′ 33″ W.	5	35° 22′ 29″ N.	74° 51′ 50″ W.
3	34° 00′ 07″ N.	74° 26′ 41″ W.	5	36° 32′ 31″ N.	74° 49′ 31″ W.
3	34° 38′ 40″ N.	75° 05′ 52″ W.	5	37° 05′ 39″ N.	74° 45′ 37″ W.
3	34° 53′ 24″ N.	74° 51′ 11″ W.	5	37° 27′ 53″ N.	74° 32′ 40″ W.
4	36° 41′ 17″ N.	71° 25′ 47″ W.	5	38° 23′ 15″ N.	73° 45′ 06″ W.
4	36° 43′ 20″ N.	72° 13′ 25″ W.	5	38° 11′ 17″ N.	73° 06′ 36″ W.

[1] These two points are connected by a line marking 100 km distance from shoreline.

National Marine Sanctuaries—As a result of consultation between BOEM and NOAA's Office of National Marine Sanctuaries, all surveys would maintain a minimum buffer of 15 km around the boundaries of the Gray's Reef and Monitor National Marine Sanctuaries. Gray's Reef NMS is located approximately 26 km off the Georgia coast and protects 57 km^2. The Monitor NMS is located approximately 26 km off the North Carolina coast and protects the wreck of the USS *Monitor.* Any benefit to marine mammals from these restrictions would likely be minimal.

Coastal Zone Management Act—As a result of coordination with relevant states pursuant to the Coastal Zone Management Act, Spectrum agreed to certain closure requirements (which may be partially or entirely subsumed by proposed closures described above):

- No survey operations within 125 nmi (232 km) of Maryland's coast from April 15 to November 15.
- No survey operations within the 30-m depth isobath off the South Carolina coast.
- No survey operations within 20 nmi (37 km) of Georgia's coast from April 1 to September 15 and within 30 nmi (56 km) of Georgia's coast from November 15 to April 15.

Vessel Strike Avoidance

These proposed measures generally follow those described in BOEM's PEIS. These measures apply to all vessels associated with the proposed survey activity (*e.g.,* source vessels, chase vessels, supply vessels) and include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down or stop their vessel or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel, according to the parameters stated below, to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to

distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale, or other marine mammal (*i.e.,* non-whale cetacean or pinniped). In this context, ''other whales'' includes sperm whales and all baleen whales other than right whales.

2. All vessels, regardless of size, must observe the 10 kn speed restriction in DMAs, the Mid-Atlantic SMA (from November 1 through April 30), and critical habitat and the Southeast SMA (from November 15 through April 15). See *www.fisheries.noaa.gov/pr/shipstrike/* for more information on these areas.

3. Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel. A single cetacean at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed.

4. All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. The following avoidance measures must be taken if a right whale is within 500 m of any vessel:

a. While underway, the vessel operator must steer a course away from the whale at 10 kn or less until the minimum separation distance has been established.

b. If a whale is spotted in the path of a vessel or within 500 m of a vessel underway, the operator shall reduce speed and shift engines to neutral. The operator shall re-engage engines only after the whale has moved out of the path of the vessel and is more than 500 m away. If the whale is still within 500 m of the vessel, the vessel must select a course away from the whale's course at a speed of 10 kn or less. This procedure must also be followed if a whale is spotted while a vessel is stationary. Whenever possible, a vessel should remain parallel to the whale's course while maintaining the 500-m distance as it travels, avoiding abrupt changes in direction until the whale is no longer in the area.

5. All vessels must maintain a minimum separation distance of 100 m from other whales. The following avoidance measures must be taken if a whale other than a right whale is within 100 m of any vessel:

a. The vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established.

b. If a vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m.

6. All vessels must maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel. If an animal is encountered during transit, a vessel shall attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course.

General Measures

All vessels associated with survey activity (*e.g.,* source vessels, chase vessels, supply vessels) must have a functioning Automatic Identification System (AIS) onboard and operating at all times, regardless of whether AIS would otherwise be required. Vessel names and call signs must be provided to NMFS, and applicants must notify NMFS when survey vessels are operating.

We have carefully evaluated the suite of mitigation measures described here to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of these measures, we have preliminarily determined that they provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

We recognize that BOEM may require more stringent measures through survey-specific permits issued to applicant companies under its authorities pursuant to the OCSLA (43 U.S.C. 1331–1356). NMFS's Endangered Species Act Interagency Cooperation Division (Interagency Cooperation Division) may also require that more stringent or additional measures be included in any issued IHAs via any required consultation pursuant to section 7 of the Endangered Species Act. Please see ''Proposed Authorizations,'' below, for requirements specific to each proposed IHA.

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed the applicants' species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting the information here. Additional general information about these species (*e.g.,* physical and behavioral descriptions) may be found

on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*), in BOEM's PEIS, or in the U.S. Navy's Marine Resource Assessments (MRA) for relevant operating areas (*i.e.,* Virginia Capes, Cherry Point, and Charleston/Jacksonville (DoN, 2008a,b,c)). The MRAs are available online at: *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html.* Table 4 lists all species with expected potential for occurrence in the mid- and south Atlantic and summarizes information related to the population or stock, including potential biological removal (PBR). For taxonomy, we follow Committee on Taxonomy (2016). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality (as described in NMFS's SARs). Species that could potentially occur in the proposed survey areas but are not expected to have reasonable potential to be harassed by any proposed survey are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

In some cases, species are treated as guilds. In general ecological terms, a guild is a group of species that have similar requirements and play a similar role within a community. However, for purposes of stock assessment or abundance prediction, certain species may be treated together as a guild because they are difficult to distinguish visually and many observations are ambiguous. For example, NMFS's Atlantic SARs assess *Mesoplodon* spp. and *Kogia* spp. as guilds. Here, we consider pilot whales, beaked whales (excluding the northern bottlenose whale), and *Kogia* spp. as guilds. In the following discussion, reference to ''pilot whales'' includes both the long-finned and short-finned pilot whale, reference to ''beaked whales'' includes the Cuvier's, Blainville's, Gervais, Sowerby's, and True's beaked whales, and reference to ''*Kogia* spp.'' includes both the dwarf and pygmy sperm whale.

Thirty-four species (with 39 managed stocks) are considered to have the potential to co-occur with the proposed survey activities. Extralimital species or stocks unlikely to co-occur with survey activity include nine estuarine bottlenose dolphin stocks, four pinniped species, the white-beaked dolphin (*Lagenorhynchus albirostris*), and the beluga whale (*Delphinapterus leucas*). The white-beaked dolphin is generally found only to southern New England, with sightings concentrated in the Gulf of Maine and around Cape Cod. Beluga whales have rarely been sighted as far south as New Jersey, but are considered extralimital in New England. Seals in the western Atlantic are, in general, occurring more frequently in areas further south than are considered typical and increases in pinniped sightings and stranding events have been documented in the mid-Atlantic. However, all seals are considered rare or extralimital in the mid-Atlantic and, further, would generally be expected to occur in relatively shallow nearshore waters outside the proposed survey areas (note also that we propose a restriction on survey activity in coastal waters ranging from a minimum of 30 km (year-round) out to 47 km (November–April)). The gray seal's (*Halichoerus grypus grypus*) winter range extends south to New Jersey, while the harp seal (*Pagophilus groenlandicus*) is generally found in Canada, although individual seals are observed as far south as New Jersey during January–May. The harbor seal's (*Phoca vitulina concolor*) winter range is generally from southern New England to New Jersey, though it may occasionally extend south to northern North Carolina. Unpublished marine mammal stranding records for the most recent five-year period (2011–2015) for the Atlantic coast from Delaware to Georgia show 38, 24, and 44 strandings for these three species, respectively (with one additional record of an unidentified seal). These occurrences are generally limited to the mid-Atlantic (Delaware to North Carolina), with one harbor seal recorded from South Carolina and no records from Georgia. The hooded seal (*Cystophora cristata*) generally remains near Newfoundland in winter and spring, and visits the Denmark Strait for molting in summer. However, hooded seals are highly migratory, preferring deeper water than other seals, and individuals have been observed in deep water as far south as Florida and the Caribbean. Such observations are rare and unpredictable, and there were no recorded strandings of hooded seals during the 2011–2015 period.

Estuarine stocks of bottlenose dolphin primarily inhabit inshore waters of bays, sounds, and estuaries, and stocks are defined adjacent to the proposed survey area from Pamlico Sound, North Carolina to Indian River Lagoon, Florida. However, NMFS's SARs generally describe estuarine stock ranges as including coastal waters to 1 km (though North Carolina stocks are described as occurring out to 3 km at certain times of year). Therefore, these stocks would not be impacted by the proposed seismic surveys. In addition, the West Indian manatee (*Trichechus manatus latirostris*) may be found in coastal waters of the Atlantic. However, manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. All managed stocks in this region are assessed in NMFS's U.S. Atlantic SARs (*e.g.,* Waring *et al.,* 2016). All values presented in Table 4 are the most recent available at the time of publication and are available in the 2015 SARs (Waring *et al.,* 2016) and draft 2016 SARs (available online at: *www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 4—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF PROPOSED SURVEY ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR	Annual M/SI (CV) [4]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)							
Family Balaenidae							
North Atlantic right whale.	*Eubalaena glacialis*	Western North Atlantic (WNA).	E/D; Y	440 (n/a; 440; n/a)	*535 (0.45)	1.0	5.66
Family Balaenopteridae (rorquals)							
Humpback whale	*Megaptera novaeangliae novaeangliae.*	Gulf of Maine	-; N	823 (n/a; 823; 2008)	*1,637 (0.07)	13	9.05
Minke whale	*Balaenoptera acutorostrata acutorostrata.*	Canadian East Coast	-; N	2,591 (0.81; 1,425; 2011).	*2,112 (0.05)	14	8.25
Bryde's whale	*B. edeni brydei*	None defined [5]	-; n/a	n/a	7 (0.58)	n/a	n/a
Sei whale	*B. borealis borealis*	Nova Scotia	E/D; Y	357 (0.52; 236; 2011)	*717 (0.30)	0.5	0.8
Fin whale	*B. physalus physalus*	WNA	E/D; Y	1,618 (0.33; 1,234; 2011).	4,633 (0.08)	2.5	3.8
Blue whale	*B. musculus musculus*	WNA	E/D; Y	Unknown (n/a; 440; n/a).	11 (0.41)	0.9	Unk
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)							
Family Physeteridae							
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D; Y	2,288 (0.28; 1,815; 2011).	5,353 (0.12)	3.6	0.8
Family Kogiidae							
Pygmy sperm whale.	*Kogia breviceps*	WNA	-; N	3,785 (0.47; 2,598; 2011) [6].	[6] 678 (0.23)	21	3.5 (1.0)
Dwarf sperm whale.	*K. sima*	WNA	-; N				
Family Ziphiidae (beaked whales)							
Cuvier's beaked whale.	*Ziphius cavirostris*	WNA	-; N	6,532 (0.32; 5,021; 2011).	[6] 14,491 (0.17)	50	0.4
Gervais beaked whale.	*Mesoplodon europaeus*	WNA	-; N	7,092 (0.54; 4,632; 2011) [6].		46	0.2
Blainville's beaked whale.	*M. densirostris*	WNA	-; N				
Sowerby's beaked whale.	*M. bidens*	WNA	-; N				
True's beaked whale.	*M. mirus*	WNA	-; N				
Northern bottlenose whale.	*Hyperoodon ampullatus*	WNA	-; N	Unknown	90 (0.63)	Undet.	0
Family Delphinidae							
Rough-toothed dolphin.	*Steno bredanensis*	WNA	-; N	271 (1.0; 134; 2011)	532 (0.36)	1.3	0
Common bottlenose dolphin.	*Tursiops truncatus truncatus.*	WNA Offshore	-; N	77,532 (0.40; 56,053; 2011).	[6] 97,476 (0.06)	561	39.4 (0.29)
		WNA Coastal, Northern Migratory.	D; Y	11,548 (0.36; 8,620; 2010–11).		86	1.0–7.5
		WNA Coastal, Southern Migratory.	D; Y	9,173 (0.46; 6,326; 2010–11).		63	0–12
		WNA Coastal, South Carolina/Georgia.	D; Y	4,377 (0.43; 3,097; 2010–11).		31	1.2–1.6
		WNA Coastal, Northern Florida.	D; Y	1,219 (0.67; 730; 2010–11).		7	0.4
		WNA Coastal, Central Florida.	D; Y	4,895 (0.71; 2,851; 2010–11).		29	0.2
Clymene dolphin	*Stenella clymene*	WNA	-; N	6,086 (0.93; 3,132; 1998) [7].	12,515 (0.56)	Undet.	0
Atlantic spotted dolphin.	*S. frontalis*	WNA	-; N	44,715 (0.43; 31,610; 2011).	55,436 (0.32)	316	0
Pantropical spotted dolphin.	*S. attenuata attenuata*	WNA	-; N	3,333 (0.91; 1,733; 2011).	4,436 (0.33)	17	0
Spinner dolphin	*S. longirostris longirostris*	WNA	-; N	Unknown	262 (0.93)	Undet.	0
Striped dolphin	*S. coeruleoalba*	WNA	-; N	54,807 (0.3; 42,804; 2011).	75,657 (0.21)	428	0
Short-beaked common dolphin.	*Delphinus delphis delphis*	WNA	-; N	70,184 (0.28; 55,690; 2011).	86,098 (0.12)	557	409 (0.10)
Fraser's dolphin	*Lagenodelphis hosei*	WNA	-; N	Unknown	492 (0.76)	Undet.	0

TABLE 4—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF PROPOSED SURVEY ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR	Annual M/SI (CV) [4]
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	WNA	-; N	48,819 (0.61; 30,403; 2011).	37,180 (0.07)	304	74 (0.2)
Risso's dolphin	*Grampus griseus*	WNA	-; N	18,250 (0.46; 12,619; 2011).	7,732 (0.09)	126	53.6 (0.28)
Melon-headed whale.	*Peponocephala electra*	WNA	-; N	Unknown	1,175 (0.50)	Undet.	0
Pygmy killer whale	*Feresa attenuata*	WNA	-; N	Unknown	n/a	Undet.	0
False killer whale	*Pseudorca crassidens*	WNA	-; Y	442 (1.06; 212; 2011)	95 (0.84)	2.1	Unk
Killer whale	*Orcinus orca*	WNA	-; N	Unknown	11 (0.82)	Undet.	0
Short-finned pilot whale.	*Globicephala macrorhynchus.*	WNA	-; Y	21,515 (0.37; 15,913; 2011).	[6] 18,977 (0.11)	159	192 (0.17)
Long-finned pilot whale.	*G. melas melas*	WNA	-; Y	5,636 (0.63; 3,464; 2011).		35	38 (0.15)
Family Phocoenidae (porpoises)							
Harbor porpoise	*Phocoena phocoena phocoena.*	Gulf of Maine/Bay of Fundy.	-; N	79,833 (0.32; 61,415; 2011).	*45,089 (0.12)	706	437 (0.18)

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

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For the right whale, the abundance value represents a count of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For humpback whales, the stock abundance estimate of 823 is based on photo-identification evidence and represents the minimum number alive in 2008, specific to the Gulf of Maine stock. The minimum estimate of 440 blue whales represents recognizable photo-identified individuals.

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. Roberts *et al.* (2016) did not produce a density model for pygmy killer whales off the east coast. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

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

[5] Bryde's whales are occasionally reported off the southeastern U.S. and southern West Indies. NMFS defines and manages a stock of Bryde's whales believed to be resident in the northern Gulf of Mexico, but does not define a separate stock in the Atlantic Ocean.

[6] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. NMFS's SARs present pooled abundance estimates for *Kogia* spp. and *Mesoplodon* spp., while Roberts *et al.* (2016) produced density models to genus level for *Kogia* spp. and *Globicephala* spp. and as a guild for most beaked whales (*Ziphius cavirostris* and *Mesoplodon* spp.). Finally, Roberts *et al.* (2016) produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[7] NMFS's abundance estimates for the Clymene dolphin is greater than eight years old and not considered current. PBR is therefore considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimate.

For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters. For the humpback and sei whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine and Nova Scotia, respectively. However, our reference to humpback whales and sei whales in this document refers to any individuals of the species that are found in the specific geographic region. For the bottlenose dolphin, NMFS defines an oceanic stock and multiple coastal stocks.

In Table 4 above, we report two sets of abundance estimates: Those from NMFS's SARs and those predicted by Roberts *et al.* (2016). Please see footnotes 2–3 for more detail. The estimates found in NMFS's SARs remain the best estimates of current stock abundance in most cases. These estimates are typically generated from the most recent shipboard and/or aerial surveys conducted, and often incorporate correction for detection bias. However, for purposes of assessing estimated exposures relative to abundance—used in this case to understand the scale of the predicted takes compared to the population and to inform our small numbers finding—we generally believe that the Roberts *et al.* (2016) abundance predictions are most appropriate because the outputs of these models were used in most cases to generate the exposure estimates and therefore provide the most appropriate comparison. The Roberts *et al.* (2016) abundance estimates represent the output of predictive models derived from observations and associated environmental parameters and are in fact based on substantially more data than are NMFS's SAR abundance estimates, which are typically derived from only the most recent survey effort. In some cases, the use of more data to inform an abundance estimate can lead to a conclusion that there may be a more appropriate abundance estimate to use for the specific comparison to exposure estimates noted above than that provided in the SARs. For example, NMFS's pilot whale abundance estimates show substantial year-to-year variability. For the Florida to Bay of Fundy region, single-year estimates from 2004 and 2011 (the most recent offered in the SARs) differed by 21 percent, indicating that it may be more appropriate to use the model prediction, as the model incorporates data from 1992–2013.

As a further illustration of the distinction between the SARs and model-predicted abundance estimates, the current NMFS stock abundance estimate for the Atlantic spotted dolphin is based on direct observations from shipboard and aerial surveys conducted in 2011 and corrected for detection bias whereas the exposure estimates presented herein for Atlantic spotted dolphin are based on the abundance predicted by a density

surface model informed by observations from 1992–2014 and covariates associated at the observation level. To directly compare the estimated exposures predicted by the outputs of the Roberts *et al.* (2016) model to NMFS's SAR abundance would therefore not be meaningful. However, our use of the Roberts *et al.* (2016) abundance predictions for this purpose should not be interpreted as a statement that those predictions are considered to be more accurate than those presented in NMFS's SARs; rather they are a different set of information entirely and more appropriate, at times, for our analysis. For the example of Atlantic spotted dolphin, we make relative comparisons between the exposures predicted by the outputs of the model and the overall abundance predicted by the model. The best current abundance estimate for the western North Atlantic stock of Atlantic spotted dolphins is still appropriately considered to be that presented in the SAR. Where there are other considerations that lead us to believe that an abundance other than that predicted by Roberts *et al.* (2016) is most appropriate for use here, we provide additional discussion below.

NMFS's abundance estimate for the North Atlantic right whale is based on a census of individual whales identified using photo-identification techniques and is therefore the most appropriate abundance estimate; the current estimate represents whales known to be alive in 2012 (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

The 2007 Canadian Trans-North Atlantic Sighting Survey (TNASS), which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009), provided abundance estimates for multiple stocks. The abundance estimates from this survey were corrected for perception and availability bias, when possible. In general, where the TNASS survey effort provided superior coverage of a stock's range (as compared with NOAA shipboard survey effort), we elect to use the resulting abundance estimate over either the current NMFS abundance estimate (derived from survey effort with inferior coverage of the stock range) or the Roberts *et al.* (2016) prediction. The TNASS data were not made available to the model authors (Roberts *et al.,* 2015a).

We use the TNASS abundance estimate for the Canadian North Atlantic stock of minke whales and for the short-beaked common dolphin. The TNASS survey also produced an abundance estimate of 3,522 (CV = 0.27) fin whales. Although Waring *et al.* (2016) suggest that the current abundance estimate of 1,618 fin whales, derived from 2011 NOAA shipboard surveys, is the best because it represents the most current data (despite not including a significant portion of the stock's range), we believe the TNASS estimate is most appropriate for use here precisely because it better covered the stock's range. Note that, while the same TNASS survey produced an abundance estimate of 2,612 (CV = 0.26) humpback whales, the survey did not provide superior coverage of the stock's range in the same way that it did for minke and fin whales (Waring *et al.,* 2016; Lawson and Gosselin, 2011). In addition, based on photo-identification only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock (Barco *et al.,* 2002). Therefore, we use the Roberts *et al.* (2016) prediction for humpback whales.

The TNASS also provided an abundance estimate for pilot whales (16,058; CV = 0.79), but covered habitats expected to contain long-finned pilot whales exclusively (Waring *et al.,* 2016). Pilot whale biopsy samples collected from 1998–2007 and analyzed to support an analysis of the likelihood that a sample is from a given species of pilot whale as a function of sea surface temperature and water depth showed that all pilot whales observed in offshore waters near the Gulf Stream are most likely short-finned pilot whales, though there is an area of overlap between the two species primarily along the shelf break off the coast of New Jersey (between 38–40° N.) (Waring *et al.,* 2016). Therefore, most pilot whales potentially affected by the proposed surveys would likely be short-finned pilot whales.

NMFS's current abundance estimate for *Kogia* spp. is substantially higher than that provided by Roberts *et al.* (2016). However, the data from which NMFS's estimate is derived was not made available to the authors (Roberts *et al.,* 2015h), and those more recent surveys reported observing substantially greater numbers of *Kogia* spp. than did earlier surveys (43 sightings, more than the combined total of 31 reported from all surveys from 1992–2014 considered by Roberts *et al.* (2016)) (NMFS, 2011). A 2013 NOAA survey, also not available to the model authors, reported 68 sightings of *Kogia* spp. (NMFS, 2013a). In addition, the SARs report an increase in *Kogia* spp. strandings (92 from 2001–05; 187 from 2007–11) (Waring *et al.,* 2007; 2013). A simultaneous increase in at-sea observations and strandings suggests increased abundance of *Kogia* spp., though NMFS has not conducted any trend analysis (Waring *et al.,* 2013). Therefore, we believe the most appropriate abundance estimate for use here is that currently reported by NMFS. In fact, Waring *et al.* (2013) suggest that because this estimate was corrected for perception bias but not availability bias, the true estimate could be two to four times larger.

Biologically Important Areas—Several biologically important areas for marine mammals are recognized from proposed survey areas in the mid- and south Atlantic. As referenced previously under ''Proposed Mitigation'', critical habitat is designated for the North Atlantic right whale within the southeast U.S. (81 FR 4838; January 27, 2016). Critical habitat is defined by section 3 of the ESA as (1) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Critical habitat for the right whale in the southeast U.S. (*i.e.,* Unit 2) encompasses calving habitat and is designated on the basis of the following essential features: (1) Calm sea surface conditions of Force 4 or less on the Beaufort Wind Scale; (2) sea surface temperatures from a minimum of 7 °C, and never more than 17 °C; and (3) water depths of 6 to 28 m, where these features simultaneously co-occur over contiguous areas of at least 231 nmi^2 of ocean waters during the months of November through April. When these features are available, they are selected by right whale cows and calves in dynamic combinations that are suitable for calving, nursing, and rearing, and which vary, within the ranges specified, depending on factors such as weather and age of the calves. The specific area associated with such features and designated as critical habitat was described previously under ''Proposed Mitigation.'' There is no critical habitat designated for any other species within the proposed survey area.

Biologically important areas for North Atlantic right whales in the mid- and south Atlantic were further described by LaBrecque *et al.* (2015). The authors describe an area of importance for reproduction that somewhat expands the boundaries of the critical habitat designation, including waters out to the 25-m isobath from Cape Canaveral to Cape Lookout from mid-November to mid-April, on the basis of habitat analyses (Good, 2008; Keller *et al.,*

2012) and sightings data (*e.g.,* Keller *et al.,* 2006; Schulte and Taylor, 2012) indicating that sea surface temperatures between 13 to 15 °C and water depths between 10–20 m are critical parameters for calving. Right whales leave northern feeding grounds in November and December to migrate along the continental shelf to the calving grounds or to unknown winter areas before returning to northern areas by late spring. Right whales are known to travel along the continental shelf, but it is unknown whether they use the entire shelf area or are restricted to nearshore waters (Schick *et al.,* 2009; Whitt *et al.,* 2013). LaBrecque *et al.* (2015) define an important area for migratory behavior on the basis of aerial and vessel-based survey data, photo-identification data, radio-tracking data, and expert judgment; we compared our composite right whale closure area (described previously under ''Proposed Mitigation'') in a GIS to that defined by the authors and found that it is contained within our area.

As noted by LaBrecque *et al.* (2015), although additional cetacean species are known to have strong links to bathymetric features, there is currently insufficient information to specifically identify these areas. For example, pilot whales and Risso's dolphins aggregate at the shelf break in the proposed survey area, and Atlantic spotted dolphins occupy the shelf region from southern Virginia to Florida. These and other locations predicted as areas of high abundance (Roberts *et al.,* 2016) form the basis of proposed spatiotemporal restrictions on survey effort as described under ''Proposed Mitigation.'' In addition, other data indicate potential areas of importance that are not yet fully described. Risch *et al.* (2014) describe minke whale presence offshore of the shelf break (evidenced by passive acoustic recorders), which may be indicative of a migratory area, while other data provides evidence that sei whales aggregate near meandering frontal eddies over the continental shelf in the Mid-Atlantic Bight (Newhall *et al.,* 2012).

Unusual Mortality Events (UME)—A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' From 1991 to the present, there have been approximately ten formally recognized UMEs affecting marine mammals in the proposed survey area and involving species under NMFS's jurisdiction. One involves ongoing investigation. The most recent of these, which is ongoing, involves humpback whales. A recently ended UME involved bottlenose dolphins.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through North Carolina. Partial or full necropsy examinations have been conducted on approximately half of the 42 known cases. Of the 20 cases examined, 10 cases had evidence of blunt force trauma or pre-mortem propeller wounds indicative of vessel strike, which is over six times above the 16-year average of 1.5 whales showing signs of vessel strike in this region. Because this finding of pre-mortem vessel strike is not consistent across all of the whales examined, more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at *www.nmfs.noaa.gov/pr/health/mmume/2017humpbackatlanticume.html* (accessed May 22, 2017).

Beginning in July 2013, elevated strandings of bottlenose dolphins were observed along the Atlantic coast from New York to Florida. The investigation was closed in 2015, with the UME ultimately being attributed to cetacean morbillivirus (though additional contributory factors are under investigation; *www.nmfs.noaa.gov/pr/health/mmume/midatldolphins2013.html*; accessed June 21, 2016). Dolphin strandings during 2013–15 were greater than six times higher than the average from 2007–12, with the most strandings reported from Virginia, North Carolina, and Florida. A total of approximately 1,650 bottlenose dolphins stranded from June 2013 to March 2015 and, additionally, a small number of individuals of several other cetacean species stranded during the UME and tested positive for morbillivirus (humpback whale, fin whale, minke whale, pygmy sperm whale, and striped dolphin). Only one offshore ecotype dolphin has been identified, meaning that over 99 percent of affected dolphins were of the coastal ecotype (D. Fauquier; pers. comm.). Research, to include analyses of stranding samples and post-UME monitoring and modeling of surviving populations, will continue in order to better understand the impacts of the UME on the affected stocks. Notably, an earlier major UME in 1987–88 was also caused by morbillivirus. Over 740 stranded dolphins were recovered during that event.

Additional recent UMEs include various localized events with undetermined cause involving bottlenose dolphins (*e.g.,* South Carolina in 2011; Virginia in 2009); an event affecting common dolphins and Atlantic white-sided dolphins from North Carolina to New Jersey (2008; undetermined); and humpback whales in the North Atlantic (2006; undetermined). For more information on UMEs, please visit: *www.nmfs.noaa.gov/pr/health/mmume/.*

Take Reduction Planning—Take reduction plans are designed to help recover and prevent the depletion of strategic marine mammal stocks that interact with certain U.S. commercial fisheries, as required by Section 118 of the MMPA. The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the mortality and serious injury of marine mammals incidental to commercial fishing to less than the potential biological removal level. The long-term goal is to reduce, within five years of its implementation, the mortality and serious injury of marine mammals incidental to commercial fishing to insignificant levels, approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Take reduction teams are convened to develop these plans.

There are several take reduction plans in place for marine mammals in the proposed survey areas of the mid- and south Atlantic. We described these here briefly in order to fully describe, in conjunction with referenced material, the baseline conditions for the affected marine mammal stocks. The Atlantic Large Whale Take Reduction Plan (ALWTRP) was implemented in 1997 to reduce injuries and deaths of large whales due to incidental entanglement in fishing gear. The ALWTRP is an evolving plan that changes as we learn more about why whales become entangled and how fishing practices might be modified to reduce the risk of entanglement. It has several components, including restrictions on where and how gear can be set and requirements for entangling gears (*i.e.,* trap/pot and gillnet gears). The ALWTRP addresses those species most affected by fishing gear entanglements, *i.e.,* North Atlantic right whale, humpback whale, fin whale, and minke whale. Annual human-caused mortality exceeds PBR for the first three of these

species, all of which are listed as endangered under the ESA. More information is available online at: *www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/.*

NMFS implemented a Harbor Porpoise Take Reduction Plan (HPTRP) to reduce interactions between harbor porpoise and commercial gillnet gear in both New England and the mid-Atlantic. The HPTRP has several components including restrictions on where, when, and how gear can be set, and in some areas requires the use of acoustic deterrent devices. More information is available online at: *www.greateratlantic.fisheries.noaa.gov/protected/porptrp/.*

The Atlantic Trawl Gear Take Reduction Team was developed to address the incidental mortality and serious injury of pilot whales, common dolphins, and white-sided dolphins incidental to Atlantic trawl fisheries. More information is available online at: *www.greateratlantic.fisheries.noaa.gov/Protected/mmp/atgtrp/.* Separately, NMFS established a Pelagic Longline Take Reduction Plan (PLTRP) to address the incidental mortality and serious injury of pilot whales in the mid-Atlantic region of the Atlantic pelagic longline fishery. The PLTRP includes a special research area, gear modifications, outreach material, observer coverage, and captains' communications. Pilot whales incur substantial incidental mortality and serious injury due to commercial fishing (annual human-caused mortality equal to 121 and 109 percent of PBR for short- and long-finned pilot whales, respectively), and therefore are of particular concern. More information is available online at: *www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.html.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analyses'' section will include an analysis of how these specific activities will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from ship strike and sound produced through use of airgun arrays.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the 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. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a pulse, and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes

important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.

• *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.

• *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

• *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The active acoustic sound sources proposed for use (*i.e.,* airgun arrays) produce pulsed signals. No other active acoustic systems are proposed for use for data acquisition purposes. Airguns produce sound with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

Vessel noise, produced largely by cavitation of propellers and by machinery inside the hull, is considered a non-pulsed sound. Sounds emitted by survey vessels are low frequency and continuous, but would be widely dispersed in both space and time. Survey vessel traffic is of very low density compared to commercial shipping traffic or commercial fishing vessels and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment. We do not consider vessel noise further in this analysis.

Acoustic Effects

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

Marine Mammal Hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Pinniped functional hearing is not discussed here, as no pinnipeds are expected to be affected by the specified activity. 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 Hz and 35 kHz, with best hearing estimated to be from 100 Hz to 8 kHz;

• Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;

• High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus*; including two members of the genus *Lagenorhynchus,* on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Thirty-four marine mammal species, all cetaceans, have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 4. Of the species that may be present, seven are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 24 are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and three are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and *Kogia* spp.).

Potential Effects of Underwater Sound—Please refer to the information given previously (''Description of Active Acoustic Sources'') regarding sound, characteristics of sound types, and metrics used in this document. Note that, in the following discussion, we refer in many cases to a recent 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 the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a ''stranding'' (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.,* Geraci *et al.,* 1999). However, the cause or causes of most strandings are unknown (*e.g.,* Best, 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.,* Sih *et al.,* 2004). For further description of specific stranding events see, *e.g.,* Southall *et al.,* 2006, 2013; Jepson *et al.,* 2013; Wright *et al.,* 2013.

Use of military tactical sonar has been implicated in a majority of investigated stranding events, although one stranding event was associated with the use of seismic airguns. This event occurred in the Gulf of California, coincident with seismic reflection profiling by the R/V *Maurice Ewing* operated by Columbia University's Lamont-Doherty Earth Observatory and involved two Cuvier's beaked whales (Hildebrand, 2004). The vessel had been firing an array of 20 airguns with a total volume of 8,500 in^3 (Hildebrand, 2004; Taylor *et al.,* 2004). Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.,* Mazzariol *et al.,* 2010; Southall *et al.,* 2013). In general, long duration (~1 second) and high-intensity sounds (>235 dB SPL) have been implicated in stranding events (Hildebrand, 2004). With regard to beaked whales, mid-frequency sound is typically implicated (when causation can be determined) (Hildebrand, 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component.

1. *Threshold Shift*—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound

exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several 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 airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran et al. (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

2. *Behavioral Effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response

to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; 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; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast

Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa^2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute cSEL of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

Forney *et al.* (2017) detail the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. As we discuss in describing our proposed mitigation earlier in this document, avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts and because, particularly for animals with high site fidelity, there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) state that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects. Among other case studies, the authors discuss beaked whales off Cape Hatteras, noting the apparent importance of this area to the species and citing studies indicating long-term, year-round fidelity. This information leads the authors to conclude that failure to appropriately address potential effects in this particular area could lead to severe biological consequences for these beaked whales, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain could lead to more severe acute effects (Forney *et al.,* 2017).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized

avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-, during and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

3. *Stress Responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *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.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

In an effort to reduce the number and severity of strikes of the endangered North Atlantic right whale, NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 kn near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by 80 to 90 percent.

For vessels used in seismic survey activities, vessel speed while towing gear is typically only 4–5 kn. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Commercial fishing vessels were responsible for three percent of recorded collisions, while no such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0–5.5 \times 10^{-6}$; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of vessels associated with seismic surveys striking a marine mammal are low, we require a robust ship strike avoidance protocol (see ''Proposed Mitigation''), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving seismic data acquisition vessels towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speeds of vessels towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers, and the small number of seismic survey cruises, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Other Potential Impacts—Here, we briefly address the potential risks due to entanglement and contaminant spills. We are not aware of any records of marine mammal entanglement in towed arrays such as those considered here. The discharge of trash and debris is prohibited (33 CFR 151.51–77) unless it is passed through a machine that breaks up solids such that they can pass through a 25-mm mesh screen. All other trash and debris must be returned to shore for proper disposal with municipal and solid waste. Some personal items may be accidentally lost overboard. However, U.S. Coast Guard and Environmental Protection Act regulations require operators to become proactive in avoiding accidental loss of solid waste items by developing waste management plans, posting informational placards, manifesting trash sent to shore, and using special precautions such as covering outside trash bins to prevent accidental loss of solid waste. Any permits issued by BOEM would include guidance for the handling and disposal of marine trash and debris, similar to the Bureau of Safety and Environmental Enforcement's (BSEE) NTL 2012–G01 (''Marine Trash and Debris Awareness and Elimination'') (BSEE, 2012; BOEM, 2014b). There are no meaningful entanglement risks posed by the described activity, and entanglement risks are not discussed further in this document.

Marine mammals could be affected by accidentally spilled diesel fuel from a vessel associated with proposed survey activities. Quantities of diesel fuel on the sea surface may affect marine mammals through various pathways: Surface contact of the fuel with skin and other mucous membranes, inhalation of concentrated petroleum vapors, or ingestion of the fuel (direct ingestion or by the ingestion of oiled prey) (*e.g.,* Geraci and St. Aubin, 1980, 1985, 1990). However, the likelihood of a fuel spill during any particular geophysical survey is considered to be remote, and the potential for impacts to marine mammals would depend greatly on the size and location of a spill and meteorological conditions at the time of the spill. Spilled fuel would rapidly spread to a layer of varying thickness and break up into narrow bands or windrows parallel to the wind direction. The rate at which the fuel spreads would be determined by the prevailing conditions such as temperature, water currents, tidal streams, and wind speeds. Lighter, volatile components of the fuel would evaporate to the atmosphere almost completely in a few days. Evaporation rate may increase as the fuel spreads because of the increased surface area of the slick. Rougher seas, high wind speeds, and high temperatures also tend to increase the rate of evaporation and the proportion of fuel lost by this process (Scholz *et al.,* 1999). We do not anticipate potentially meaningful effects to marine mammals as a result of any contaminant spill resulting from the proposed survey activities, and contaminant spills are not discussed further in this document.

Anticipated Effects on Marine Mammal Habitat

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pulsed sound on fish, although several are based on studies in support of construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from survey activities at the project area would be temporary avoidance of the area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe in which any given acoustic source vessel would be operating in any given area. However, adverse impacts may occur to a few species of fish which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

In summary, activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take by Incidental Harassment

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).''

Anticipated takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* airgun array) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result from use of the acoustic source, primarily for either high-frequency or low-frequency hearing specialists due to larger predicted auditory injury zones (on the basis of peak pressure and cumulative SEL, respectively). Auditory injury is unlikely to occur for most mid-frequency hearing specialists (*e.g.,* dolphins, sperm whale). The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. It is unlikely that lethal takes would occur

even in the absence of the proposed mitigation and monitoring measures, and no such takes are anticipated or proposed for authorization.

Sound Thresholds

We have historically used generic acoustic thresholds (see Table 5) to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. We are aware of suggestions regarding new criteria concerning behavioral disruption (*e.g.,* Nowacek *et al.,* 2015), but there is currently no scientific agreement on the matter. NMFS will consider potential changes to the historical criteria for behavioral harassment in the future.

TABLE 5—HISTORICAL ACOUSTIC EXPOSURE CRITERIA FOR IMPULSIVE SOURCES

Criterion	Definition	Threshold
Level A harassment	Injury (onset PTS—any level above that which is known to cause TTS).	180 dB rms (cetaceans).
Level B harassment	Behavioral disruption	160 dB rms (impulse sources).

However, NMFS has recently introduced new technical guidance for auditory injury (equating to Level A harassment under the MMPA); for more information, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm* (NMFS, 2016). Historical threshold levels for auditory injury were developed in the late 1990s using the best information available at the time (*e.g.,* HESS, 1999). Since the adoption of these historical thresholds, our understanding of the effects of noise on marine mammal hearing has greatly advanced (*e.g.,* Southall *et al.,* 2007; Finneran, 2015). The new technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, reflects the best available science, and better predicts the potential for auditory injury than does NMFS's historical criteria. The technical guidance reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that better address the impacts of noise on hearing sensitivity, *i.e.,* peak sound pressure level (peak SPL) (better reflects the physical properties of impulsive sound sources, to affect hearing sensitivity) and cumulative sound exposure level (cSEL) (accounts for not only level of exposure but also durations of exposure);
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

NMFS's new technical guidance (NMFS, 2016) builds upon the foundation provided by Southall *et al.* (2007), while incorporating new information available since development of that work (*e.g.,* Finneran, 2015). Southall *et al.* (2007) recommended specific thresholds under the dual metric approach (*i.e.,* peak SPL and cumulative SEL) and that marine mammals be divided into functional hearing groups based on measured or estimated functional hearing ranges. The premise of the dual criteria approach is that, while there is no definitive answer to the question of which acoustic metric is most appropriate for assessing the potential for injury, both the received level and duration of received signals are important to an understanding of the potential for auditory injury. Therefore, peak SPL is used to define a pressure criterion above which auditory injury is predicted to occur, regardless of exposure duration (*i.e.,* any single exposure at or above this level is considered to cause auditory injury), and cSEL is used to account for the total energy received over the duration of sound exposure (*i.e.,* both received level and duration of exposure) (Southall *et al.,* 2007; NMFS, 2016). As a general principle, whichever criterion is exceeded first (*i.e.,* results in the largest isopleth) would be used as the effective injury criterion (*i.e.,* the more precautionary of the criteria). Note that cSEL acoustic threshold levels incorporate marine mammal auditory weighting functions, while peak pressure thresholds do not (*i.e.,* flat or unweighted). NMFS (2016) recommends 24 hours as a maximum accumulation period relative to cSEL thresholds. For further discussion of auditory weighting functions and their application, please see NMFS (2016). Table 6 displays thresholds provided by NMFS (2016).

TABLE 6—EXPOSURE CRITERIA FOR AUDITORY INJURY FOR IMPULSIVE SOURCES

Hearing group	Peak pressure [1] (dB)	Cumulative sound exposure level [2] (dB)
Low-frequency cetaceans	219	183
Mid-frequency cetaceans	230	185
High-frequency cetaceans	202	155

[1] Referenced to 1 μPa; unweighted within generalized hearing range.
[2] Referenced to 1 $\mu Pa^2 s$; weighted according to appropriate auditory weighting function.

NMFS considers these updated thresholds and associated weighting functions to be the best available information for assessing whether exposure to specific activities is likely to result in changes in marine mammal hearing sensitivity. However, all applications were submitted and declared adequate and complete prior to finalization of the technical guidance, based on the best available information at the time. BOEM's PEIS (BOEM, 2014a) does provide information enabling a reasonable approximation of potential acoustic exposures relative to the ''Southall criteria.'' While the peer-reviewed criteria provided by Southall *et al.* (2007) differ from that described by NMFS (2016), they do function substantively as a reasonable precursor to the new technical guidance. We derived applicant specific exposure estimates for Level A harassment from BOEM's PEIS and then corrected these to reasonably account for NMFS's new technical guidance. This process is described below (see ''Level A Harassment'').

Sound Field Modeling

BOEM's PEIS (BOEM, 2014a) provides information related to estimation of the sound fields that would be generated by potential geophysical survey activity on the mid- and south Atlantic OCS. We provide a summary description of that modeling effort here; for more information, please see Appendix D of BOEM's PEIS (Zykov and Carr, 2014 in BOEM, 2014a). The acoustic modeling generated a three-dimensional acoustic propagation field as a function of source characteristics and physical properties of the ocean for later integration with marine mammal density information in an animal movement model to estimate potential acoustic exposures.

The authors selected 15 modeling sites throughout BOEM's Mid-Atlantic and South Atlantic OCS planning areas for use in modeling predicted sound fields resulting from use of the airgun array. The water depth at the sites varied from 30–5,400 m. Two types of bottom composition were considered: Sand and clay, their selection depending on the water depth at the source. Twelve possible sound speed profiles for the water column were used to cover the variation of the sound velocity distribution in the water with location and season. Twenty-one distinct propagation scenarios resulted from considering different sound speed profiles at some of the modeling sites. Two acoustic propagation models were employed to estimate the acoustic field radiated by the sound sources. A version of JASCO Applied Science's Marine Operations Noise Model (MONM), based on the Range-dependent Acoustic Model (RAM) parabolic-equations model, MONM–RAM, was used to estimate the SELs for low-frequency sources (below 2 kHz) such as an airgun array. For more information on sound propagation model types, please see, *e.g.,* Etter (2013). The model takes into account the geoacoustic properties of the sea bottom, vertical sound speed profile in the water column, range-dependent bathymetry, and the directivity of the source. The directional source levels for the airgun array was modeled using the Airgun Array Source Model (AASM) based on the specifications of the source such as the arrangement and volume of the guns, firing pressure, and depth below the sea surface. The modeled directional source levels were used as the input for the acoustic propagation model. For background information on major factors affecting underwater sound propagation, please see Zykov and Carr (2014).

The modeling used a 5,400 in^3 airgun array as a representative example. The array has dimensions of 16 x 15 m and consists of 18 air guns placed in three identical strings of six air guns each (please see Figure D–6 of Zykov and Carr (2014)). The volume of individual air guns ranges from 105–660 in^3. Firing pressure for all elements is 2,000 psi. The depth below the sea surface for the array was set at 6.5 m. Please see Table 1 for a comparison to the airgun arrays proposed for use by the applicant companies. Horizontal third-octave band directionality plots resulting from source modeling are shown in Figure D–8 of Zykov and Carr (2014).

As noted, the AASM was used to predict the directional source level (SL) of the airgun array. The MONM was then used to estimate the acoustic field at any range from the source. MONM–RAM was used to predict the directional transmission loss (TL) footprint from various source locations corresponding to the selected modeling sites. The received level (RL) at any 3D location away from the source is calculated by combining the SL and TL, both of which are direction dependent, using the fundamental relation $RL = SL - TL$. Acoustic TL and RL are a function of depth, range, bearing, and environmental properties of the propagation medium. The RLs estimated by MONM, like the SLs from which they are computed, are expressed in terms of the SEL metric over the duration of a single source pulse. Sound exposure level is expressed in units of dB re 1 $\mu Pa^2 \cdot s$. For the purposes of this study, the SEL results were converted to the rms SPL metric using a range dependent conversion coefficient.

The U.S. Naval Oceanographic Office's Generalized Digital Environmental Model database was used to extract sound velocity profiles for the mid- and south Atlantic in order to characterize the entire water body into a discreet number of specific propagation regions. The profiles were selected to reflect the variation of sea water properties at the different locations selected throughout the mid- and south Atlantic OCS as well as seasonal variation at the same location (*i.e.,* winter, spring, summer, fall). The profiles for each season were grouped into about 17 regions with similar propagation characteristics and representative profiles for each region were selected. Finally, the bottom characteristics for each of these 17 regions were examined to determine if any region needed to be divided to accommodate the influence of the various bottom types on that region's propagation. The result was 21 separate modeling regions that in sum captured the propagation for the entire area; therefore, taken in conjunction with the 15 applicable sites there were a total of 21 modeling scenarios applicable to the airgun array. These scenarios are detailed in Table D–21 in Zykov and Carr (2014). Each acoustic modeling scenario is characterized by a unique combination of parameters. The main variables in the environment configuration are the bathymetry and the sound velocity profile in the water column. The geoacoustic properties of the sea bottom are directly correlated with the water depth of the modeling site. Four depth regions were classified based on bathymetry: Shallow continental shelf (<60 m); continental shelf (60–150 m); continental slope (150–1,000 m); and deep ocean (>1,000 m). The modeling results show that the largest threshold radii are typically associated with sites in intermediate water depths (250 and 900 m). Low frequencies propagate relatively poorly in shallow water (*i.e.,* water depths on the same order as or less than the wavelength). At intermediate water depths, this stripping of low-frequency sound no longer occurs, and longer-range propagation can be enhanced by the channeling of sound caused by reflection from the surface and seafloor (depending on the nature of the sound speed profile and sediment type).

Table 7 shows scenario-specific modeling results for distances to the 160 dB level; results presented are for the 95 percent range to threshold. Given a regularly gridded spatial distribution of modeled RLs, the 95 percent range is defined as the radius of a circle that encompasses 95 percent of the grid points whose value is equal to or greater than the threshold value. This definition is meaningful in terms of potential impact to an animal because, regardless of the geometrical shape of the noise footprint for a given threshold level, it always provides a range beyond which no more than five percent of a uniformly distributed population would be exposed to sound at or above that level. The maximum range, which is simply the distance to the farthest occurrence of the threshold level, is the more conservative but may misrepresent the effective exposure zone. For example, there are cases where the volume ensonified to a specific level may not be continuous and small pockets of higher RLs may be found far outside the main ensonified volume (for example, because of convergence). If only the maximum range is presented, a false impression of the extent of the acoustic

field can be given (Zykov and Carr, 2014).

TABLE 7—MODELING SCENARIOS AND SITE-SPECIFIC MODELED THRESHOLD RADII FROM BOEM'S PEIS

Scenario No.	Site No.[1]	Water depth (m)	Season	Bottom type	Threshold radii (m)[2]
1	1	5,390	Winter	Clay	4,969
2	2	2,560	Winter	Clay	5,184
3	3	880	Winter	Sand	8,104
4	4	249	Winter	Sand	8,725
5	5	288	Winter	Sand	8,896
6	1	5,390	Spring	Clay	4,989
7	6	3,200	Spring	Clay	5,026
8	3	880	Spring	Sand	8,056
9	7	251	Spring	Sand	8,593
10	8	249	Spring	Sand	8,615
11	1	5,390	Summer	Clay	4,973
12	6	3,200	Summer	Clay	5,013
13	3	880	Summer	Sand	8,095
14	9	275	Summer	Sand	9,122
15	10	4,300	Fall	Clay	5,121
16	11	3,010	Fall	Clay	5,098
17	12	4,890	Fall	Clay	4,959
18	13	3,580	Fall	Clay	5,069
19	3	880	Fall	Sand	8,083
20	14	100	Fall	Sand	8,531
21	15	51	Fall	Sand	8,384
Mean					6,838

Adapted from Tables D–21 and D–22 of Zykov and Carr (2014).
[1] Please see Figure D–35 of Zykov and Carr (2014) for site locations.
[2] Threshold radii to 160 dB (rms) SPL, 95 percent range.

We provide this description of the modeling performed for BOEM's PEIS as a general point of reference for the proposed surveys, and also because three of the applicant companies—TGS, CGG, and Western—directly use these results to inform their exposure modeling, rather than performing separate sound field modeling. As described by BOEM (2014a), the modeled array was selected to be representative of the large airgun arrays likely to be used by geophysical exploration companies in the mid- and south Atlantic OCS. Therefore, we use the BOEM (2014a) results as a reasonable proxy for those two companies (please see ''Detailed Description of Activities'' for further description of the acoustic sources proposed for use by these two companies). ION and Spectrum elected to perform separate sound field modeling efforts, and these are described below. For generally applicable conclusions, as summarized from Appendix A of ION's application, see below.

ION—ION provided information related to estimation of the sound fields that would be generated by their proposed geophysical survey activity on the mid- and south Atlantic OCS. We provide a summary description of that modeling effort here; for more information, please see Appendix A of ION's application (Li, 2014; referred to hereafter as Appendix A of ION's application). ION proposes to use a 36-element airgun array with a 6,420 in^3 total firing volume (please see ''Detailed Description of Activities'' for further description of ION's acoustic source). The modeling assumed that ION would operate from July to December. Sixteen representative sites were selected along survey track lines planned by ION for use in modeling predicted sound fields resulting from use of the airgun array (see Figure 2 in Appendix A of ION's application for site locations). Two acoustic propagation models were employed to estimate the acoustic field radiated by the sound sources. As was described above for BOEM's PEIS, the acoustic signature of the airgun array was predicted using AASM and MONM was used to calculate the sound propagation and acoustic field near each defined site. The modeling process follows generally that described previously for BOEM's PEIS. Key differences are the characteristics of the acoustic source (see Table 1), locations of the modeled sites, and the use of a restricted set of sound velocity profiles (*e.g.,* fall and winter). Table 8 shows site-specific modeling results for distances to the 160 dB level; results presented are for the 95 percent range to threshold.

TABLE 8—SITE-SPECIFIC MODELED THRESHOLD RADII FOR ION

Site No.[1]	Water depth (m)	Season	Threshold radii (m)[2]
1	45	Fall	4,740
		Winter	5,270
2	820	Fall	7,470
		Winter	7,490
3	1,000	Fall	7,530
		Winter	7,480

TABLE 8—SITE-SPECIFIC MODELED THRESHOLD RADII FOR ION—Continued

Site No.[1]	Water depth (m)	Season	Threshold radii (m)[2]
4	40	Fall	4,200
		Winter	5,220
5	650	Fall	7,270
		Winter	7,370
6	1,500	Fall	5,210
		Winter	5,250
7	2,600	Fall	5,420
		Winter	5,390
8	30	Fall	4,480
		Winter	4,770
9	700	Fall	8,210
		Winter	8,250
10	3,300	Fall	5,410
		Winter	5,380
11	4,200	Fall	5,390
		Winter	5,360
12	30	Fall	3,250
		Winter	4,860
13	140	Fall	6,470
		Winter	6,750
14	2,400	Fall	5,460
		Winter	5,450
17[3]	2,200	Fall	5,600
		Winter	5,570
18[3]	4,180	Fall	5,400
		Winter	5,380
Mean		Fall	5,383
		Winter	5,953
		Overall	5,836

Adapted from Tables 1 and 17 of Appendix A in ION's application.
[1] Please see Figure 2 of Appendix A in ION's application for site locations.
[2] Threshold radii to 160 dB (rms) SPL, 95 percent range.
[3] Results for sites 15 and 16 are not presented, as the sites are outside the proposed survey area.

Spectrum—Spectrum provided information related to estimation of the sound fields that would be generated by their proposed geophysical survey activity on the mid- and south Atlantic OCS. We provide a summary description of that modeling effort here; for more information, please see Appendix A of Spectrum's application (Frankel *et al.,* 2015; referred to hereafter as Appendix A of Spectrum's application). Spectrum plans to use a 32-element airgun array with a 4,920 in^3 total firing volume (please see ''Detailed Description of Activities'' for further description of Spectrum's acoustic source). Array characteristics were input into the GUNDALF model to calculate the source level and predict the array signature. The directivity pattern of the airgun array was calculated using the beamforming module in the CASS-GRAB acoustic propagation model. These models provided source input information for the range-dependent acoustic model (RAM), which was then used to predict acoustic propagation and estimate the resulting sound field. The RAM model creates frequency-specific, three-dimensional directivity patterns (sound field) based upon the size and location of each airgun in the array. As described previously, physical characteristics of the underwater environment (*e.g.,* sound velocity profile, bathymetry, substrate composition) are critical to understanding acoustic propagation; 16 modeling locations were selected that span the acoustic conditions of the proposed seismic survey area. ION and Spectrum used the same modeling locations (Table 8). In contrast to ION's approach, Spectrum elected to use sound velocity profiles for winter and spring and assumed that half of the survey would occur in winter and half in spring. Table 9 shows site-specific modeling results for distances to the 160 dB level; results presented are for the 95 percent range to threshold.

TABLE 9—SITE-SPECIFIC MODELED THRESHOLD RADII FOR SPECTRUM

Site No.[1]	Water depth (m)	Threshold radii (m)[2]
1	45	12,400
2	820	9,900
3	1,000	9,600
4	40	7,850

TABLE 9—SITE-SPECIFIC MODELED THRESHOLD RADII FOR SPECTRUM—Continued

Site No.[1]	Water depth (m)	Threshold radii (m)[2]
5	650	9,350
6	1,500	7,600
7	2,600	6,700
8	30	7,650
9	700	9,150
10	3,300	6,700
11	4,200	7,000
12	30	24,300
13	140	14,750
14	2,400	7,650
17[3]	2,200	8,600
18[3]	4,180	7,200
Mean		9,775

Adapted from Table 6 of Spectrum's application.
[1] Please see Figure 5 of Appendix A in Spectrum's application for site locations.
[2] Threshold radii to 160 dB (rms) SPL, 95 percent range.
[3] Results for sites 15 and 16 are not presented, as the sites are outside the proposed survey area.

Generally applicable conclusions were discussed in Appendix A of ION's application, and are summarized here.

At shallow water sites, the sound field at long distances is dominated by intermediate frequencies (*i.e.,* 100–500 Hz) and the sound field varies significantly with direction because of the correspondingly high directivity of the source at these frequencies. Lower frequency energy is more rapidly attenuated and so is not able to propagate to very long distances. In contrast, the long-range spectra at deeper-water sites contain more low-frequency energy, resulting in longer propagation distances, and the shape of the sound field is also more strongly influenced by the directionality of the airgun array at low frequencies (*i.e.,* tens of hertz). Differences across seasons and sites are generally not great due to similar sound velocity profiles (*e.g.,* dominant downward refraction for depths greater than approximately 100 m) and counter-balancing effects of depth versus substrate composition. Shallow-water sites have mostly sandy sediments, which are more acoustically reflective, but low frequencies (as are produced by airguns) propagate relatively poorly in shallow water. Deep-water sites are located over clay sediments, which are associated with greater bottom loss, but this is balanced by the better low-frequency propagation in deep water. The largest threshold radii are seen in intermediate depths, because these sites are located over acoustically reflective sand sediments but in depths at which low-frequency sound is no longer stripped out. Further, longer-range propagation at these sites can be increased by sound channeling due to reflection from the sea surface and seabed (depending on the sound velocity profiles and sediment types).

Marine Mammal Density Information

The best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take). Historically, distance sampling methodology (Buckland *et al.,* 2001) has been applied to visual line-transect survey data to estimate abundance within large geographic strata (*e.g.,* Fulling *et al.,* 2003; Mullin and Fulling, 2004; Palka, 2006). Design-based surveys that apply such sampling techniques produce stratified abundance estimates and do not provide information at appropriate spatiotemporal scales for assessing environmental risk of a planned survey. To address this issue of scale, efforts were developed to relate animal observations and environmental correlates such as sea surface temperature in order to develop predictive models used to produce fine-scale maps of habitat suitability (*e.g.,* Waring *et al.,* 2001; Hamazaki, 2002; Best *et al.,* 2012). However, these studies generally produce relative estimates that cannot be directly used to quantify potential exposures of marine mammals to sound, for example. A more recent approach known as density surface modeling, as seen in DoN (2007) and Roberts *et al.* (2016), couples traditional distance sampling with multivariate regression modeling to produce density maps predicted from fine-scale environmental covariates (*e.g.,* Becker *et al.,* 2014).

At the time the applications were initially developed, the best available information concerning marine mammal densities in the proposed survey area was the U.S. Navy's Navy Operating Area (OPAREA) Density Estimates (NODEs) (DoN, 2007). These habitat-based cetacean density models utilized vessel-based and aerial survey data collected by NMFS from 1998–2005 during broad-scale abundance studies. Modeling methodology is detailed in DoN (2007). A more advanced cetacean density modeling effort, described in Roberts *et al.* (2016), was ongoing during initial development of the applications, and the model outputs were made available to the applicant companies. All information relating to this effort was made publically available in March 2016.

The Roberts *et al.* (2016) modeling effort provided several key improvements with respect to the NODEs effort. While the NODEs effort utilized a robust collection of NMFS survey data, Roberts *et al.* (2016) expanded on this by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, ultimately incorporating 60 percent more shipboard and five hundred percent more aerial survey hours than did NODEs. In addition, Roberts *et al.* (2016) controlled for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting, whereas NODEs controlled for none of these. There are multiple reasons why marine mammals may be undetected by observers. Animals are missed because they are underwater (availability bias) or because they are available to be seen, but are missed by observers (perception and detection biases) (*e.g.,* Marsh and Sinclair, 1989). Negative bias on perception or detection of an available animal may result from environmental conditions, limitations inherent to the observation platform, or observer ability. Therefore, failure to correct for these biases may lead to underestimates of cetacean abundance. Use of additional data was used to improve detection functions for taxa that were rarely sighted in specific survey platform configurations. The degree of underestimation would likely be particularly impactful for species that exhibit long dive times, such as sperm and beaked whales, or are hard for observers to detect, such as harbor porpoises. Roberts *et al.* (2016) modeled density from eight physiographic and 16 dynamic oceanographic and biological covariates, as compared with two dynamic environmental covariates considered in NODEs. In summary, consideration of additional survey data and an improved modeling strategy allowed for an increased number of taxa modeled and better spatiotemporal resolutions of the resulting predictions. In general, we consider the models produced by Roberts *et al.* (2016) to be the best available source of data regarding cetacean density in the Atlantic. More information, including the model results and supplementary information for each model, is available at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.*

Aerial and shipboard survey data produced by the Atlantic Marine Assessment Program for Protected Species (AMAPPS) program provides an additional source of information regarding marine mammal presence in the proposed survey areas. These surveys represent a collaborative effort between NMFS, BOEM, and the Navy. Although the cetacean density models described above do include survey data from 2010–14, the AMAPPS data was not made available to the model authors. Future model updates will incorporate these data, but as of this writing the AMAPPS data comprises a separate source of information (NMFS, 2010a, 2011, 2012, 2013a, 2014, 2015a).

Description of Exposure Estimates

Here, we provide applicant-specific descriptions of the processes employed to estimate potential exposures of marine mammals to given levels of received sound. The discussions provided here are specific to estimated exposures to NMFS criterion for Level B harassment (*i.e.,* 160 dB rms); we provide a separate discussion below regarding our process for estimating potential incidents of Level A harassment. We first describe the exposure modeling process performed for BOEM's PEIS as point of reference. Appendix E of the PEIS (BOEM, 2014a) provides full details.

This description builds on the description of sound field modeling provided earlier in this section and in

Appendix D of BOEM's PEIS. As described previously, 21 distinct acoustic propagation regions were defined. Reflecting seasonal differences in sound velocity profiles, these regions were specific to each season—there were five acoustic propagation regions in both winter and spring, four in summer, and seven propagation regions in fall (see Figures E–11 through E–14 in Appendix E of BOEM's PEIS). The seasonal distribution of marine mammals was examined using the NODEs database (DoN, 2007) to see if there was any additional correlation with the propagation regions. The seasonal distribution for each species was examined by overlaying the charts of the 21 acoustic modeling regions and the average density of each species was then numerically determined for each region. For each species modeled through the NODEs effort, the model outputs are four seasonal surface density plots (*e.g.,* Figure E–15 in Appendix E of BOEM's PEIS). However, the NODEs models do not provide outputs for the extended continental shelf areas seaward of the EEZ; therefore, known density information at the edge of the area modeled by NODEs was extrapolated to the remainder of the study area.

The results of the acoustic modeling exercise (*i.e.,* estimated 3D sound field) and the region-specific density estimates were then input into Marine Acoustics, Inc.'s Acoustic Integration Model (AIM). AIM is a software package developed to predict the exposure of receivers (*e.g.,* an animal) to any stimulus propagating through space and time through use of a four-dimensional, individual-based, Monte Carlo-based statistical model. Within the model, simulated marine animals (*i.e.,* animats) may be programmed to behave in specific ways on the basis of measured field data. An animat movement engine controls the geographic and vertical movements (*e.g.,* speed and direction) of sound sources and animats through four dimensions (time and space) according to user inputs. Species that normally inhabit specific environments can be constrained in the model to stay within that habitat (*e.g.,* deep-water species may be restricted from entering shallow waters where they would not be found).

Species-specific animats were created with programmed behavioral parameters describing dive depth, surfacing and dive durations, swimming speed, course change, and behavioral aversions (*e.g.,* water too shallow). The programmed animats were then randomly distributed over a given bounded simulation area; boundaries extend at least one degree of latitude or longitude beyond the extent of the vessel track to ensure an adequate number of animats in all directions, and to ensure that the simulation areas extend beyond the area where substantial behavioral reactions might be anticipated. Because the exact positions of sound sources and animals are not known in advance for proposed activities, multiple runs of realistic predictions are used to provide statistical validity to the simulated scenarios. Each species-specific simulation is seeded with a given density of animats; in this case, approximately 4,000 animats. In most cases, this represents a higher density of animats in the simulation (0.1 animats/km^2) than occurs in the real environment. A separate simulation was created and run for each combination of location, movement pattern, and marine mammal species.

A model run consists of a user-specified number of steps forward in time, in which each animat is moved according to the rules describing its behavior. For each time step of the model run, the received sound levels at each animat (*i.e.,* each marine mammal) are calculated. AIM returns the movement patterns of the animats, and the received sound levels are calculated separately using the given acoustic propagation predictions at different locations. At the end of each time step, an animat ''evaluates'' its environment, including its 3D location, the time, and any received sound level, and may alter its course to react to the environment per any programmed aversions.

Animat positions relative to the acoustic source (*i.e.,* range, bearing, and depth) were used to extract received level estimates from the acoustic propagation modeling results. The source levels, and therefore subsequently the received levels, include the embedded corrections for signal pulse length and M-weighting. M-weighting is a type of frequency weighting curve intended to reflect the differential potential for sound to affect marine mammals based on their sensitivity to the particular frequencies produced (Southall *et al.,* 2007). Please see Appendix D of BOEM's PEIS for further description of the application of M-weighting filters. For each bearing, distance, and depth from the source, the received level values were expressed as SPLs (rms) with units of dB re 1μ Pa. These are then converted back to intensity and summed over the duration of the exercise to generate an integrated energy level, expressed in terms of dB re 1 μPa^2-sec or dB SEL. The number of animats per species that exceeded a given criterion (*e.g.,* 160 dB rms; 198 dB cSEL) may then be determined, and these results scaled according to the relationship of model-to-real world densities per species. That is, the exposure results are corrected using the actual species- and region-specific density derived from the density model outputs to give real-world estimates of exposure to sound exceeding a given received level. In this case, the user-specified densities are typically at least an order of magnitude greater than the real-world densities to ensure a statistically valid result; therefore, the modeling result is corrected or scaled by the ratio of the actual density divided by the modeled density. Although there is substantial uncertainty associated with both the acoustic sound field estimation and animal movement modeling steps, confidence intervals were not developed for the exposure estimate results, in part because calculating confidence limits for numbers of Level B harassment takes would imply a level of quantification and statistical certainty that does not currently exist (BOEM, 2014a). Further detail regarding all aspects of the modeling process is provided in Appendix E of BOEM's PEIS.

As noted previously, the NODEs models (DoN, 2007) provided the best available information at the time of initial development for these applications. Outputs of the cetacean density models described by Roberts *et al.* (2016) were subsequently made available to the applicant companies. Two applicants (TGS and Western) elected to consider the new information and produced revised applications accordingly. CGG also used the new information in developing their application. Two applicants (Spectrum and ION) declined to use the Roberts *et al.* (2016) density models. However, because NMFS determined that the Roberts *et al.* (2016) density models represent the best available information (in relation to the NODEs models) we worked with Marine Acoustics, Inc.—which performed the initial exposure modeling provided in the Spectrum and ION applications—to produce revised exposure estimates utilizing the outputs of the Roberts *et al.* (2016) density models.

In order to revise the exposure estimates for Spectrum and ION, we first needed to extract appropriate density estimates from the Roberts *et al.* (2016) model outputs. Because both Spectrum and ION used modeling processes conceptually similar to that described above for BOEM's PEIS, these density estimates would replace those previously derived from the NODEs models in rescaling the exposure estimation results from those derived from animal movement modeling using

a user-specified density. We summarize the steps involved in calculating mean marine mammal densities over the 21 modeling areas used in both BOEM's PEIS and the applications here:

- Roberts *et al.* (2016) predicted densities on an annual or monthly time period. When the time period was annual, we used the same density for all seasons. When the time period was monthly, we calculated the mean density for each season (using ArcGIS' cell statistics tool).
- We converted the Roberts *et al.* (2016) density units (animals/100 km^2) to animals/km^2.
- As was the case for the NODEs model outputs, the Roberts *et al.* (2016) model outputs are restricted to the U.S. EEZ. Although relevant information regarding cetacean densities in areas of the western North Atlantic beyond the EEZ was recently provided by Mannocci *et al.* (2017), this information was not available to the applicants in developing their applications and was not available to NMFS in preparing this document. Therefore, we similarly extended the edge densities to cover the area outside of the data extent. This was performed by converting the seasonal rasters to numeric Python arrays, then using Python array functions to extend the edge cells.
- With new density values covering the entire modeling extent, we then calculated the average density for each of the 21 modeling areas (using ArcGIS' Zonal Statistics as Table tool).

Spectrum—Spectrum's sound field estimation process was previously described, and their exposure modeling process is substantially similar to that described above for BOEM's PEIS. The exposure estimation results described in Spectrum's application are based on the NODEs models. Because the NODEs model outputs do not cover the full extent of the proposed survey area, density estimates from the eastern-most edge where data are known were extrapolated seaward to the spatial extent of the proposed survey area. The same acoustic propagation regions described for BOEM's PEIS were used by Spectrum for exposure modeling; however, Spectrum limited their analysis to winter and spring seasons and therefore used only ten of the 21 regions. Half of proposed survey activity was assumed to occur in winter and half in spring.

As was described for BOEM's PEIS, Spectrum used AIM to model animal movements within the estimated 3D sound field. However, Spectrum elected to seed the simulations with a lower animat density (0.05 animats/km^2) than was used for BOEM's PEIS modeling effort. Spectrum stated that the modeled animat density value was determined through a sensitivity analysis that examined the stability of the predicted exposure estimates as a function of animat density and that the modeled density was determined to accurately capture the full distributional range of probabilities of exposure for the proposed survey. Similar to the modeling performed for BOEM's PEIS, the source levels and therefore subsequently the received levels include the embedded corrections for M-weighting (Southall *et al.,* 2007).

AIM simulations consisted of 25 hours of survey track for each modeling site and animal group. This duration was selected to use a 24-hour sound energy accumulation period for exposure estimation. The first hour of model output is then discarded, as animal distributions will be unduly influenced by initial conditions. In addition, there was a difference between the amount of modeled survey trackline within each modeling region and the actual proposed amount of survey trackline. The potential impacts were scaled by the ratio of the total length of proposed trackline to the modeled length of trackline in each modeling region. Spectrum elected to program certain species' animats with one aversion; normally deep-water species were not allowed to move into waters shallower than 100 m. Avoidance of right whales as indicated by the time-area restrictions required by BOEM's ROD (BOEM, 2014b) was also accounted for.

Similar to modeling conducted for BOEM's PEIS, received sound level and 3D position of each animat were recorded to calculate exposure estimates at each time step. Thus unweighted SPL(rms) and SEL values, as well as M-weighted SEL values, were calculated and compared with their respective criteria. The SEL values at each time step were converted back to intensity and summed, to produce the 24-hr cSEL value for each individual animat. The numbers of animats with SPL(rms) and cSEL values that exceeded their respective regulatory criteria were considered exposed for that criteria.

Spectrum also included a mitigation simulation in their modeling process, *i.e.,* they attempted to quantify the effects that a shutdown for marine mammals occurring within a 500 m exclusion zone and subsequent 60 minute clearance period would have on exposure estimates. As was described for BOEM's PEIS, dataset outputs of the AIM simulation model contain an animat's received sound level (SEL or SPL), the distance between the source and the animat, and the depth of the animat. Spectrum used the distance value to determine if the animat was in the 500-m exclusion zone and the depth of the animat was used to determine if it was at or near the surface. If both of these conditions were true, then the animat was considered 'available' to be observed. However, an animal that is available to be observed may still be missed by an observer due to perception bias. Therefore, Spectrum attempted to model the probability that an animal available for observation would in fact be observed. A random number was generated and compared to the detection probability for the species being modeled (*P*(detect); detection probabilities are shown in Table 14 of Appendix A in Spectrum's application). If the random number was less than the *P*(detect) value then the animal was considered to have been detected; if greater, the animal was considered undetected. If an animat was detected, AIM would simulate the effect of the acoustic source being shut down by setting the received sound levels of all animats in the model run to zero for the next 60 minutes. Predicted exposures without this mitigation simulation were also presented (see Tables 15–16 in Appendix A of Spectrum's application for a comparison of the mitigation simulation effect).

In summary, the original exposure results were obtained using AIM to model source and animat movements, with received SEL for each animat predicted at a 30-second time step. This predicted SEL history was used to determine the maximum SPL (rms or peak) and cSEL for each animat, and the number of exposures exceeding relevant criteria recorded. The number of exposures are summed for all animats to get the number of exposures for each species, with that summed value then scaled by the ratio of real-world density to the model density value. The final scaling value was the ratio of the length of the modeled survey line and the length of proposed survey line in each modeling region. As described above, the exposure estimates provided in Spectrum's application were based on the NODEs model outputs. In order to make use of the best available information (*i.e.,* Roberts *et al.* (2016)), we extracted species- and region-specific density values as described above. These were provided to Marine Acoustics, Inc. in order to rescale the original exposure results produced using the seeded animat density; revised exposure estimates are shown in Table 10.

ION—ION's sound field estimation process was previously described, and

their exposure modeling process is substantially similar to that described above for BOEM's PEIS (and for Spectrum). We do not repeat those descriptions in full but summarize some key elements and differences relating to ION's approach. Further detail may be found in Appendix B of ION's application.

The exposure estimation results described in ION's application are based on the NODEs models. The same acoustic propagation regions described for BOEM's PEIS were used by ION for exposure modeling; however, ION limited their analysis to summer and fall seasons and therefore used only 11 of the 21 regions. Whichever season returned the higher number of estimated exposures for a given species was assumed to be the season in which the survey occurred, *i.e.,* ION's requested take authorization corresponds to the higher of the two seasonal species-specific exposure estimates.

As was described for BOEM's PEIS, ION used AIM to model animal movements within the estimated 3D sound field. ION proposes to conduct survey effort along lines roughly parallel to and roughly perpendicular to the east coast. Because a number of these lines are similar to each other in terms of direction and location, a reduced number of modeling lines—five alongshore and five perpendicular to shore—were created to represent all of the proposed survey lines. The lines were then further broken into segments that correspond to the boundaries of the modeling regions (see Figure 4 in Appendix B of ION's application). Simulation durations varied depending on model line length. After models were run for each line segment and subsegment, the results from all segments in each of the survey areas were scaled to reflect the actual length of proposed survey lines and then combined. ION elected to seed the simulations with a variable animat density because of the variable length of the tracks and the varied habitat of some species. ION did not account for potential effectiveness of mitigation in their modeling effort.

In summary, the original exposure results were obtained using AIM to model source and animat movements, with received SEL for each animat predicted at a 30-second time step. This predicted SEL history was used to determine the maximum SPL (rms or peak) and cSEL for each animat, and the number of exposures exceeding relevant criteria recorded. The number of exposures are summed for all animats to get the number of exposures for each species, with that summed value then scaled by the ratio of real-world density to the model density value. The final scaling value was the ratio of the length of the modeled survey line and the length of proposed survey line in each modeling region. As described above, the exposure estimates provided in ION's application were based on the NODEs model outputs. In order to make use of the best available information (*i.e.,* Roberts *et al.* (2016)), we extracted species- and region-specific density values as described above. These were provided to Marine Acoustics, Inc. in order to rescale the original exposure results produced using the seeded animat density; revised exposure estimates are shown in Table 10.

TGS and Western—Because TGS and Western follow the same approach to estimating potential marine mammal exposures to underwater sound, we provide a single description. It is also important to note that both companies propose the use of a mitigation source (*i.e.,* 90 in^3 airgun) for line turns and transits not exceeding three hours and produced exposure estimates for such use of the source. As described previously in ''Proposed Mitigation,'' we do not propose to allow use of the mitigation source. Therefore, exposure estimates produced by both companies that account for proposed use of the source will be slightly overestimated. This applies only to the ten species whose exposure estimates are based on the Roberts *et al.* (2016) density models, as we were not presented with exposure estimates specific to the full-power array versus the mitigation source. The companies assumed that the sound field estimates provided by BOEM (2014a) would be applicable and consider three depth bins: <880 m, 880–2,560 m, >2,560 m. The 15 modeling sites have a notable depth discontinuity within the overall range (51–5,390 m), with no sites at depths between 880–2,560 m. When considering the 21 modeling scenarios across the 15 sites, threshold radii shown in Table 7 break down evenly with 11 at depths ≤880 m and ten at depths ≥2,560 m. The mean threshold radius for the scenarios at shallow sites is 8,473 m; for the scenarios at deep sites the average is 5,040 m. The overall mean for all scenarios is 6,838 m. Because there are no sites for depths between 880–2,560 m, we assume that the overall mean threshold distance is appropriate.

Because both applications were prepared by Smultea Environmental Sciences, LLC (SES) under contract to the applicant companies, in this section we refer hereafter to ''SES'' rather than to ''TGS and Western.'' SES considered both the Roberts *et al.* (2016) density models as well as the AMAPPS data (NMFS, 2010a, 2011, 2012, 2013a, 2014). In so doing, SES determined that there are aspects of the Roberts *et al.* (2016) methodology that limit the model outputs' applicability to estimating marine mammal exposures to underwater sound. In summary, SES described the following issues:

- There are very few sightings of some species despite substantial survey effort;
- The modeling approach extrapolates based on habitat associations and assumes some species' occurrence in areas where they have never been or were rarely documented (despite substantial effort);
- In some cases, uniform density models spread densities of species with small sample sizes across large areas of the EEZ without regard to habitat, and;
- The most recent NOAA shipboard and aerial survey data (*i.e.,* AMAPPS) were not included in model development.

In response to these general concerns regarding suitability of model outputs for exposure estimation, SES developed a scheme related to the number of observations in the dataset available to Roberts *et al.* (2016) for use in developing the density models. Extremely rare species (*i.e.,* less than four sightings in the proposed survey area) were considered to have a very low probability of encounter, and it was assumed that the species might be encountered once. Therefore, a single group of the species was considered as expected to be exposed to sound exceeding the 160 dB rms harassment criterion. We agree with this approach and further describe relevant information related to these species in subsequent sections below.

As described previously, marine mammal abundance has traditionally been estimated by applying distance sampling methodology (Buckland *et al.,* 2001) to visual line-transect survey data. Buckland *et al.* (2001) recommend a minimum sample size of 60–80 sightings to provide reasonably robust estimates of density and abundance to fit the mathematical detection function required for this estimation; smaller sample sizes result in higher variance and thus less confidence and less accurate estimates. For species meeting this guideline within the proposed survey area, SES used Roberts *et al.* (2016)'s model. For species with fewer sightings (but with greater than four sightings in the proposed survey area), SES used what they refer to as ''Line Transect Theory'' in conjunction with AMAPPS data to estimate species

density within the assumed 160 dB rms zone of ensonification.

Ten species or species groups met SES' requirement of having at least 60 sightings within the proposed survey area in the dataset available to Roberts *et al.* (2016): Atlantic spotted dolphin, pilot whales, striped dolphin, beaked whales, bottlenose dolphin, Risso's dolphin, short-beaked common dolphin, sperm whale, humpback whale, and North Atlantic right whale. Roberts *et al.* (2016) were able to produce models at annual resolution for the first four species and at monthly resolution for the latter six. Because of proposed measures to avoid most impacts to the right whale, SES used monthly data only for May to October to estimate potential exposures. As an aside, we acknowledge that this approach is not correct. Rather than ignoring the months November–April, we believe the correct approach would be to use the results for those months, but only for the grid cells outside of the proposed closure areas. However, we do not believe that this is a meaningful error, as our proposed mitigation measures related to right whales (*i.e.,* avoidance of sound input into areas where right whales are expected to occur and an absolute shutdown requirement upon observation of any right whale at any distance) are anticipated to substantially avoid acute effects to right whales. SES summarizes the steps involved in this process as follows:

- Calculate area of ensonification to ≥160 dB (rms) around the operating acoustic source, including all track lines, run-outs, and ramp-ups/run-ins, assuming depth-specific isopleth distances described above. Overlapping areas were treated as if they did not overlap (*i.e.,* they were added together as separate polygon areas to account for multiple exposures in the same location), and were thus included in the total area used to estimate exposures.
- Calculate species-specific density estimates for each of the 10 km x 10 km grid cells used in the density models. For species with monthly resolution, an annual average was calculated, with the exception of the right whale which used the May–October average only.
- The density models' area of data coverage does not extend outside of the EEZ. As noted previously, although relevant information regarding cetacean densities in areas of the western North Atlantic beyond the EEZ was recently provided by Mannocci *et al.* (2017), this information was not available to SES in developing these applications. Therefore, available sighting data were used to evaluate whether a species had been observed offshore close to the EEZ; no specific distance was used because it was impossible to determine exact distances from the EEZ using available reports. For the humpback whale and right whale, available information indicated that the species would not be expected to occur outside the EEZ. For the remaining species, SES extrapolated density from the nearest neighbor grid cell. Assuming such uniform density swaths over long range outside the area of data coverage may overestimate potential exposures.
- For each 10 km x 10 km grid cell and for the areas of extrapolation outside the EEZ, SES then multiplied the estimated ensonified area by the appropriate density to produce estimates of exposure exceeding the 160 dB rms criterion.
- The projected ensonified area was mapped relative to right whale closure areas described by BOEM (2014b); therefore, this element of proposed mitigation was accounted for to a certain extent.

Seven species or species groups met SES' criterion for conducting exposure modeling, but did not have the recommended 60 sightings in the survey area: minke whale, fin whale, *Kogia* spp., harbor porpoise, pantropical spotted dolphin, clymene dolphin, and rough-toothed dolphin. For these species, SES did not feel use of the density models was appropriate and developed a method using the available data instead (*i.e.,* AMAPPS data as well as data considered by Roberts *et al.* (2016), excluding results of surveys conducted entirely outside of an area roughly coincident with the proposed survey area); species-specific rationale is provided in section 6.3 of either application. Please see section 6.3 of either application for further details regarding the AMAPPS survey effort considered by SES. Table 6–1 in either application summarizes the AMAPPS data available for consideration by the authors. Although Roberts *et al.* (2016) developed detection functions for these species by using proxies as necessary, SES suggests that the fact that sightings of these species are not common indicate the species are less common than the density models show. SES states further that, while use of the density models for these species may be appropriate for localized activities, using them over broad geographical scales ultimately grossly overestimates the likely exposures of these species. SES summarizes the steps involved in this process as follows (see Table 6–4 in either application for numerical process details):

- Calculate the transect area, specific to aerial and vessel surveys, that would be considered to include sightings of all animals present for each species based on effective strip widths (ESW; the distance at which missed sightings made inside the distance is equal to detected sightings outside of it) obtained from the literature. The transect area is equal to twice the ESW multiplied by the length of transect (see Table 6–3 in either application for ESW values and citations).
- Calculate the mean density (in groups/km^2) for each species for aerial and vessel surveys; multiply by mean group size to get an individual-based density estimate.
- Adjust the densities using a correction factor ($g(0)$) to account for animals missed due to observation biases. General $g(0)$ values for aerial and vessel surveys for each species from the literature were used (see Table 6–3 in either application for $g(0)$ values and citations). Densities for vessel-based and aerial surveys were then averaged for each species; proposed survey lines cover areas included in both aerial and vessel survey effort and this method accounts for high and low density areas across the survey.
- Calculate the number of animals of each species that would potentially occur within the previously determined 160-dB depth-specific radii and sum for an estimate of total incidents of exposure.

To be clear, we believe the density models described by Roberts *et al.* (2016) provide the best available information and recommend their use for species other than those expected to be extremely rare in a given area. However, SES used the most recent observational data available. We acknowledge their concerns regarding use of predictive density models for species with relatively few observations in the proposed survey area, *e.g.,* that model-derived density estimates must be applied cautiously on a species-by-species basis with the recognition that in some cases the out-of-bound predictions could produce unrealistic results (Becker *et al.,* 2014). Further, use of uniform (*i.e.,* stratified) density models assumes a given density over a large geographic range which may include areas where the species has rarely or never been observed. For the seven species or species groups that SES applied their alternative approach to, five are modeled in whole or part through use of stratified models. We also acknowledge (as do Roberts *et al.* (2016)) that predicted habitat may not be occupied at expected densities or that models may not agree in all cases with known occurrence patterns, and that there is uncertainty associated with

predictive habitat modeling (*e.g.,* Becker *et al.,* 2010; Forney *et al.,* 2012). Overall, SES suggest that it is more appropriate in some circumstances to use less complex models requiring less knowledge of habitat preferences that do not risk overprediction of occurrence in areas that are suitable but for which there is no indication the species is common (or sometimes even present). We determined that their alternative approach (for seven species or species groups) is acceptable and provide further discussion. Importantly, we recognize that there is no model or approach that is always the most appropriate and that there may be multiple approaches that may be considered acceptable.

As described previously in this document, on July 29, 2015, we published a **Federal Register** notice inviting public review and comment on the applications we had received. In response to this opportunity to comment, J.J. Roberts and P.N. Halpin of Duke University's Marine Geospatial Ecology Lab submitted a public comment letter, which is available online with all other comments received at *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm.* In part, Roberts and Halpin offered a critique of SES' methods and rationale while also commending their use of the AMAPPS data. We discussed the points raised by Roberts and Halpin with SES, which subsequently made certain corrections and prepared revised versions of the TGS and Western applications. M. Smultea and S. Courbis of SES submitted a letter (available on the same Web site) detailing their responses to these points. However, the use of an alternative methodology for the seven species is fundamentally the same and forms the basis for our proposed take authorization for those species (for TGS and Western).

Roberts and Halpin raised several key points (we also include any resolution in the bulleted points below):

- The Buckland *et al.* (2001) recommendation that sample size should generally be at least 60–80 should be considered as general guidance but not an absolute rule and, in fact, Buckland *et al.* (2001) provide no theoretical proof for it. Miller and Thomas (2015) provide an example where a detection function fitted to 30 sightings resulted in a detection function with low bias. NMFS's line-transect abundance estimates are in some cases based on many fewer sightings, *e.g.,* stock assessments based on Palka (2012). Roberts and Halpin also point out that SES used certain detection functions from Mullin and Fulling (2003), which were based on fewer than 60 observations. Please see the letters provided by Duke University and SES, respectively, for opposing points of view on this issue.
- SES does not correct for observation bias, resulting in underestimation of density. SES subsequently corrected this issue by using estimates of $g(0)$ to correct for bias, as described above.
- SES used erroneous or inappropriate ESWs for several species, resulting in an overestimate of effective survey area and therefore an underestimate of density. SES subsequently incorporated additional ESW information and addressed these issues to the extent possible given the available data.
- Following on the first point described above, ESWs used by SES are based on less robust detection functions than those used by Roberts *et al.* (2016).
- SES did not take into account what is known about the habitat of the species it modeled using this method. For example, Roberts *et al.* (2016) appropriately assumed an on-shelf density of zero for *Kogia* spp., whereas SES derived a *Kogia* spp. density estimate by including on-shelf survey effort, where *Kogia* spp. would not be expected. SES countered that, for *Kogia* spp. in particular, the more recent AMAPPS data provides substantial new information regarding *Kogia* spp. due to the increased sightings in recent years and suggest that for exposure estimation exercises over broad scales such as these, it is less important where a species is encountered in relation to how many will be encountered.
- SES declined to use density models for certain species on the basis of a lack of observations within the proposed survey area, although the models are based on numerous observations overall. Roberts and Halpin state that, because the models incorporate substantial survey effort within the proposed survey area, they are well-informed with regard to the likelihood of species occurrence under relevant environmental conditions. However, this does not alter the fact that these species have only rarely been observed within the proposed survey area and, therefore, SES' contention that use of a predictive density model to estimate potential acoustic exposures is not the most appropriate method for some species.
- SES' combination of aerial and vessel-based densities is inappropriate, due to substantial biases in terms of distribution of survey effort, *i.e.,* aerial surveys occurred primarily on-shelf while vessel-based surveys mainly occurred off-shelf. Therefore, use of a simple mean can result in unknown bias for species with either oceanic or on-shelf distribution. Roberts and Halpin suggest combining density estimates by dividing survey transects into segments, estimating density separately for aerial and shipboard surveys, and producing a combined estimate that accounts for the area effectively surveyed by each. However, because the proposed surveys would occur both on and off the shelf, it does not seem that any potential bias would unduly influence the overall results obtained by SES.
- SES does not adequately consider available information (*i.e.,* acoustic monitoring results; Risch *et al.,* 2014) for the minke whale. However, while available acoustic monitoring data suggests seasonal presence of minke whales, it remains unclear in the absence of visual observations where the whales are in relation to the acoustic recorders and how many may be present.

CGG—CGG used applicable results from BOEM's sound field modeling exercise in conjunction with the outputs of models described by Roberts *et al.* (2016) to inform their estimates of likely acoustic exposures. Considering only the BOEM modeling sites that are in or near CGG's proposed survey area provided a mean radial distance to the 160 dB rms criterion of 6,751 m (range 5,013–8,593 m). CGG used ArcGIS (further detail regarding CGG's spatial analysis is provided as an appendix to CGG's application) to conduct an exposure analysis as described in their application and summarized as follows:

- A circle with a 6,751 m radius (representing the extent of the average expected 160 dB rms ensonification zone) was drawn around each trackline, effectively resulting in a survey track with 13,502 m total width. Taxon-specific model outputs, averaged over the six-month period planned for the survey (*i.e.,* July–December) where relevant, were uploaded into ArcGIS with the assumed ensonification zone to provide estimates of marine mammal exposures to noise above the 160 dB rms threshold.
- The Roberts *et al.* (2016) 100 km^2 grid cells—the spatial scale on which taxon-specific predicted abundance information is provided—were converted into a compatible format and then spatially referenced over the tracklines and associated areas of ensonification. The tracklines and associated areas of ensonification were populated with the cetacean density grids by calculating the difference between the pre- and post-extracted area.

• Roberts *et al.* (2016) did not provide predicted abundance information for areas beyond the EEZ. As noted previously, although relevant information regarding cetacean densities in areas of the western North Atlantic beyond the EEZ was recently provided by Mannocci *et al.* (2017), this information was not available to CGG in developing their application. Therefore, CGG performed an interpolation analysis to estimate density values for the approximately 11 percent of planned survey area outside the EEZ that was not included in Roberts *et al.* (2016).

Level A Harassment

As discussed earlier in this document, BOEM's PEIS (2014a) provides auditory injury exposure results on the basis of the Southall *et al.* (2007) guidance. In order to use the results provided by BOEM (2014a) in a way that adequately takes NMFS's technical acoustic guidance into consideration, we considered the total potential exposure of marine mammals to sound exceeding the relevant criterion and estimated such exposures that may occur as a result of each specific survey as a relative proportion of total line-km. We compiled predicted 2D seismic survey activity across all years considered in BOEM's PEIS (see Table E–11 of Appendix E in BOEM's PEIS), which yields a potential total of 616,174 line-km. We divided each company's proposed total trackline by this total before multiplying the total species-specific estimated exposures across years by this proportion to yield a total survey-specific estimate of potential Level A harassment on the basis of the Southall received energy criterion (for low-frequency cetaceans) and the 180-dB rms criterion (for mid- and high-frequency cetaceans) (see Tables Attachment E–4 and Attachment E–5 of Appendix E in BOEM's PEIS). Whether using the Southall guidance (Southall *et al.,* 2007) or NMFS's new technical guidance (NMFS, 2016) (*i.e.,* in consideration of both auditory weighting functions for cSEL and thresholds for both cSEL and peak pressure), accumulation of energy would be considered to be the predominant source of potential auditory injury for low-frequency cetaceans, while instantaneous exposure to peak pressure received levels would be considered to be the predominant source of injury for both mid- and high-frequency cetaceans. Although NMFS's historical 180-dB rms injury criterion is no longer reflective of the best available science, the exposure results provided in BOEM's PEIS relative to the criterion are the most appropriate for use in providing ''corrected'' estimates based on the relevant peak pressure thresholds. Use of these results provides a proxy for the highly uncertain risk of auditory injury due to any proposed survey, which we then adjusted to reasonably account for NMFS's new technical acoustic guidance.

For low-frequency cetaceans, in order to ''correct'' these estimates of potential Level A exposure to account for NMFS's new technical acoustic guidance, we followed the process outlined previously under ''Exclusion Zone and Shutdown Requirements.'' We obtained spectrum data (in 1 Hz bands) for a reasonably equivalent acoustic source in order to appropriately incorporate weighting functions (*i.e.,* those described in NMFS (2016) and Southall *et al.* (2007)) over the source's full acoustic band. Using these data, we made adjustments (dB) to the spectrum levels, by frequency, according to the weighting functions for each relevant hearing group. We then converted these adjusted/weighted spectrum levels to pressures (micropascals) in order to integrate them over the entire broadband spectrum, resulting in weighted source levels by hearing group. Using the safe distance methodology described by Sivle *et al.* (2014) with the hearing group-specific weighted source levels, and assuming spherical spreading propagation, source velocity of 4.5 kn, pulse duration of 100 milliseconds (ms), and applicant-specific shot intervals, we then calculated potential radial distances to auditory injury zones on the basis of the two separate sets of weighting functions and thresholds. Comparison of the predicted hearing group-specific areas ensonified above thresholds defined in Southall *et al.* (2007) and NMFS (2016) provided correction factors that we then applied to the exposure results calculated on the basis of the Southall *et al.* (2007) criteria. These ''corrected'' results are provided in Table 11.

For mid- and high-frequency cetaceans, we also calculated potential radial distances to auditory injury zones on the basis of the relevant peak pressure thresholds alone, assuming spherical spreading propagation (auditory weighting functions are not used in considering potential injury due to peak pressure received levels). Comparison of the predicted hearing group-specific areas ensonified above thresholds defined by the historical NMFS criterion (*i.e.,* 180-dB rms) and NMFS (2016) provided correction factors that we then applied to the BOEM PEIS exposure results calculated on the basis of the 180-dB rms criterion. These ''corrected'' results, which are more conservative than results for these two hearing groups calculated on the basis of the cSEL approach, are provided in Table 11.

We recognize that the Level A exposure estimates provided here are a rough approximation of actual exposures, for several reasons. First, specific trackline locations proposed by the applicant companies may differ somewhat from those considered in BOEM's PEIS. However, as noted above, BOEM's PEIS assumes a total of 616,174 line-km of 2D survey effort conducted over seven years. Therefore, it is likely that all portions of the proposed survey area are considered in the PEIS analysis. Second, the PEIS exposure estimates are based on outputs of the NODEs models (DoN, 2007) versus the density models described by Roberts *et al.* (2016), which we believe represent the best available information for purposes of exposure estimation. There are additional reasons why any estimate of exposures to levels of sound exceeding the Level A harassment criteria is likely an approximation: We do not have sufficient information to approximate the probability of marine mammal aversion and subsequent likelihood of Level A exposure and we do not generally incorporate the effects of mitigation on the likelihood of Level A exposure (though this is of less importance when considering the potential for Level A exposure due to cumulative exposure of sound energy). Our intention is to use the information available to us, in reflection of available science regarding the potential for auditory injury, to acknowledge the potential for such outcomes in a way that we think is a reasonable approximation.

We note here that four of the five applicant companies (excepting Spectrum) declined to request authorization of take by Level A harassment. Although ION's proposed survey is smaller in terms of survey line-km, their source is larger in terms of predicted acoustic output (see Table 1). TGS, CGG, and Western claim, in summary, that Level A exposures will not occur largely due to the effectiveness of proposed mitigation. We do not find this assertion credible and propose to authorize take by Level A harassment, as displayed in Table 11.

Rare Species

Certain species potentially present in the proposed survey areas are expected to be encountered only extremely rarely, if at all. Although Roberts *et al.* (2016) provide density models for these species (with the exception of the pygmy killer

whale), due to the small numbers of sightings that underlie these models' predictions we believe it appropriate to account for the small likelihood that these species would be encountered by assuming that these species might be encountered once by a given survey, and that Level A harassment would not occur for these species. With the exception of the northern bottlenose whale, none of these species should be considered cryptic (*i.e.,* difficult to observe when present) versus rare (*i.e.,* not likely to be present). Average group size was determined by considering known sightings in the western North Atlantic (CETAP, 1982; Hansen *et al,* 1994; NMFS, 2010a, 2011, 2012, 2013a, 2014, 2015a; Waring *et al.,* 2007, 2015). It is important to note that our proposal to authorize take equating to harassment of one group of each of these species is not equivalent to expected exposure. We do not expect that these rarely occurring (in the proposed survey area) species will be exposed at all, but provide a precautionary authorization of take. We provide a brief description for each of these species.

Sei Whale—Very little is known of sei whales in the western North Atlantic outside of northern feeding grounds, and much of what is known of sei whale distribution and movements is based on whaling records (Prieto *et al.,* 2012). Spring is the period of greatest abundance in U.S. waters, but sightings are concentrated on feeding grounds in the Gulf of Maine and in the vicinity of Georges Bank, outside the proposed survey areas (CETAP, 1982; Hain *et al.,* 1985). There are no definitive sightings reported south of 40° N., *i.e.,* no sightings reported from the proposed survey areas, although NOAA surveys in 1992 and 1995 reported four ambiguous sightings of ''Bryde's or sei whales'' between Florida and Cape Hatteras in winter (Roberts *et al.,* 2015j). Additionally, passive acoustic monitoring has detected sei whales in the winter near Onslow Bay, North Carolina, and near the shelf break off of Jacksonville, Florida (*e.g.,* Read *et al.,* 2010, 2012; Frasier *et al.,* 2016; Debich *et al.,* 2013, 2014; Norris *et al.,* 2014), and one sei whale stranding is reported from North Carolina (Byrd *et al.,* 2014). It is worth noting that the model authors include the four ambiguous sightings in both the sei whale and Bryde's whale models, thereby potentially overestimating the density of one species or the other but acknowledging the potential presence of both species in the area (Roberts *et al.,* 2015j). Schilling *et al.* (1992) report a mean group size of 1.8 sei whales, similar to the average group size of 2.2 whales across all NMFS observations in the Atlantic. We assume an average group size of two whales.

Bryde's Whale—NMFS defines and manages a stock of Bryde's whales believed to be resident in the northern Gulf of Mexico, but does not define a separate stock in the western North Atlantic Ocean. Bryde's whales are occasionally reported off the southeastern U.S. and southern West Indies (Leatherwood and Reeves, 1983). Genetic analysis suggests that Bryde's whales from the northern Gulf of Mexico represent a unique evolutionary lineage distinct from other recognized Bryde's whale subspecies, including those found in the southern Caribbean and southwestern Atlantic off Brazil (Rosel and Wilcox, 2014). Two strandings from the southeastern U.S. Atlantic coast share the same genetic characteristics with those from the northern Gulf of Mexico but it is unclear whether these are extralimital strays or they indicate the population extends from the northeastern Gulf of Mexico to the Atlantic coast of the southern U.S. (Byrd *et al.,* 2014; Rosel and Wilcox, 2014). There are no definitive sightings of Bryde's whales from the U.S. Atlantic reported from surveys considered by Roberts *et al.* (2016), although, as noted above for the sei whale, NOAA surveys in 1992 and 1995 reported four ambiguous sightings of ''Bryde's or sei whales'' between Florida and Cape Hatteras in winter. These four ambiguous sightings provide the basis for a stratified density model (Roberts *et al.,* 2016). There are no NMFS observations of Bryde's whales outside the Gulf of Mexico, but Silber *et al.* (1994) reported an average group size of 1.2 whales from the Gulf of California. Given the similarities to sei whales, we assume an average group size of two whales.

Blue Whale—The blue whale is best considered as an occasional visitor in US Atlantic waters, which may represent the current southern limit of its feeding range (CETAP, 1982; Wenzel *et al.,* 1988). NMFS's minimum population abundance estimate is based on photo-identification of recognizable individuals in the Gulf of St. Lawrence (Waring *et al.,* 2010), and the few sightings in U.S. waters occurred in the vicinity of the Gulf of Maine. All sightings have occurred north of 40° N. (Roberts *et al.,* 2015e). However, blue whales have been detected acoustically in deep waters north of the West Indies and east of the U.S. EEZ (Clark, 1995). Roberts *et al.* (2016) produced a stratified density model on the basis of a few blue whale sightings in the vicinity of the Gulf of Maine (Roberts *et al.,* 2015e). Reports of blue whales in the eastern tropical Pacific and off of Australia are typically of lone whales or groups of two (Reilly and Thayer, 1990; Gill, 2002); NMFS sightings in the Atlantic are only of lone whales. Therefore, we assume an average group size of one whale.

Northern Bottlenose Whale—Northern bottlenose whales are considered extremely rare in U.S. Atlantic waters, with only five NMFS sightings. The southern extent of distribution is generally considered to be approximately Nova Scotia (though Mitchell and Kozicki (1975) reported stranding records as far south as Rhode Island), and there have been no sightings within the proposed survey areas. Whitehead and Wimmer (2005) estimated the size of the population on the Scotian Shelf at 163 whales (95 percent CI 119–214). Whitehead and Hooker (2012) report that northern bottlenose whales are found north of approximately 37.5° N. and prefer deep waters along the continental slope. Roberts *et al.* (2016) produced a stratified density model on the basis of four sightings in the vicinity of Georges Bank (Roberts *et al.,* 2015b). The five sightings in U.S. waters yield a mean group size of 2.2 whales, while MacLeod and D'Amico report a mean group size of 3.6 (n = 895). Here, we assume an average group size of four whales.

Killer Whale—Killer whales are also considered rare in U.S. Atlantic waters (Katona *et al.,* 1988; Forney and Wade, 2006), constituting 0.1 percent of marine mammal sightings in the 1978–81 Cetacean and Turtle Assessment Program surveys (CETAP, 1982). Roberts *et al.* (2016) produced a stratified density model on the basis of four killer whale sightings (Roberts *et al.,* 2015g), though Lawson and Stevens (2014) provide a minimum abundance estimate of 67 photo-identified individual killer whales. Available information suggests that survey encounters with killer whales would be unlikely but could occur anywhere within the proposed survey area and at any time of year (*e.g.,* Lawson and Stevens, 2014). Silber *et al.* (1994) reported observations of two and 15 killer whales in the Gulf of California (mean group size 8.5), while May-Collado *et al.* (2005) described mean group size of 3.6 whales off the Pacific coast of Costa Rica. Based on 12 CETAP sightings and one group observed during NOAA surveys (CETAP, 1982; NMFS, 2014), the average group size in the Atlantic is 6.8 whales. Therefore, we assume an average group size of seven whales.

False Killer Whale—Although records of false killer whales from the U.S. Atlantic are uncommon, a combination of sighting, stranding, and bycatch records indicates that this species does occur in the western North Atlantic (Waring *et al.,* 2015). Baird (2009) suggests that false killer whales may be naturally uncommon throughout their range. Roberts *et al.* (2016) produced a stratified density model on the basis of two false killer whale sightings (Roberts *et al.,* 2015m), and NMFS produced the first abundance estimate for false killer whales on the basis of one sighting during 2011 shipboard surveys (Waring *et al.,* 2015). Similar to the killer whale, we believe survey encounters would be unlikely but could occur anywhere within the proposed survey area and at any time of year. Mullin *et al.* (2004) reported a mean false killer whale group size of 27.5 from the Gulf of Mexico, and May-Collado *et al.* (2005) described mean group size of 36.2 whales off the Pacific coast of Costa Rica. The few sightings from CETAP (1982) and from NOAA shipboard surveys give an average group size of 10.3 whales. As a precaution, we will assume an average group size of 28 whales, as reported from the Gulf of Mexico.

Pygmy Killer Whale—The pygmy killer whale is distributed worldwide in tropical to sub-tropical waters, and is assumed to be part of the cetacean fauna of the tropical western North Atlantic (Jefferson *et al.* 1994; Waring *et al.,* 2007). Pygmy killer whales are rarely observed by NOAA surveys outside the Gulf of Mexico—one group was observed off of Cape Hatteras in 1992—and the rarity of such sightings may be due to a naturally low number of groups compared to other cetacean species (Waring *et al.,* 2007). NMFS has never produced an abundance estimate for this species and Roberts *et al.* (2016) were not able to produce a density model for the species. The 1992 sighting was of six whales; therefore, we assume an average group size of six.

Melon-headed Whale—Similar to the pygmy killer whale, the melon-headed whale is distributed worldwide in tropical to sub-tropical waters, and is assumed to be part of the cetacean fauna of the tropical western North Atlantic (Jefferson *et al.* 1994; Waring *et al.,* 2007). Melon-headed whales are rarely observed by NOAA surveys outside the Gulf of Mexico—groups were observed off of Cape Hatteras in 1999 and 2002—and the rarity of such sightings may be due to a naturally low number of groups compared to other cetacean species (Waring *et al.,* 2007). NMFS has never produced an abundance estimate for this species and Roberts *et al.* (2016) produced a stratified density model on the basis of four sightings (Roberts *et al.,* 2015d). The two sightings reported by Waring *et al.* (2007) yield an average group size of 50 whales.

Spinner Dolphin—Distribution of spinner dolphins in the Atlantic is poorly known, but they are thought to occur in deep water along most of the U.S. coast south to the West Indies and Venezuela (Waring *et al.,* 2014). There have been a handful of sightings in deeper waters off the northeast U.S. and one sighting during a 2011 NOAA shipboard survey off North Carolina, as well as stranding records from North Carolina south to Florida and Puerto Rico (Waring *et al.,* 2014). Roberts *et al.* (2016) provide a stratified density model on the basis of two sightings (Roberts *et al.,* 2015i). Regarding group size, Mullin *et al.* (2004) report a mean of 91.3 in the Gulf of Mexico; May-Collado (2005) describe a mean of 100.6 off the Pacific coast of Costa Rica; and CETAP (1982) sightings in the Atlantic yield a mean group size of 42.5 dolphins. As a precaution, we will assume an average group size of 91 dolphins, as reported from the Gulf of Mexico.

Fraser's Dolphin—As was stated for both the pygmy killer whale and melon-headed whale, the Fraser's dolphin is distributed worldwide in tropical waters, and is assumed to be part of the cetacean fauna of the tropical western North Atlantic (Perrin *et al.,* 1994; Waring *et al.,* 2007). The paucity of sightings of this species may be due to naturally low abundance compared to other cetacean species (Waring *et al.,* 2007). Despite possibly being more common in the Gulf of Mexico than in other parts of its range (Dolar, 2009), there were only five reported sightings during NOAA surveys from 1992–2009. In the Atlantic, NOAA surveys have yielded only two sightings (Roberts *et al.,* 2015f). May-Collado *et al.* (2005) reported a single observation of 158 Fraser's dolphins off the Pacific coast of Costa Rica, and Waring *et al.* (2007) describe a single observation of 250 Fraser's dolphins in the Atlantic, off Cape Hatteras. Therefore, we assume an average group size of 204 dolphins.

Atlantic White-sided Dolphin—White-sided dolphins are found in temperate and sub-polar continental shelf waters of the North Atlantic, primarily in the Gulf of Maine and north into Canadian waters (Waring *et al.,* 2016). Palka *et al.* (1997) suggest the existence of stocks in the Gulf of Maine, Gulf of St. Lawrence, and Labrador Sea. Stranding records from Virginia and North Carolina suggest a southerly winter range extent of approximately 35° N. (Waring *et al.,* 2016); therefore, it is possible that the proposed surveys could encounter white-sided dolphins. Roberts *et al.* (2016) elected to split their study area at the north wall of the Gulf Stream, separating the cold northern waters, representing probable habitat, from warm southern waters, where white-sided dolphins are likely not present (Roberts *et al.,* 2015k). Over 600 observations of Atlantic white-sided dolphins during CETAP (1982) and during NMFS surveys provide a mean group size estimate of 47.7 dolphins, while Weinrich *et al.* (2001) reported a mean group size of 52 dolphins. Here, we assume an average group size of 48 dolphins.

Table 10 displays the estimated incidents of potential exposures above given received levels of sound that are used to estimate Level B harassment, as derived by various methods described above. We do not include the 11 rarely occurring species described above, because our assumption that a single group of each species would be encountered does not constitute an exposure estimate (however they are considered in Table 11 for our proposed take authorizations). Total applicant-specific exposure estimates as a proportion of the most appropriate abundance estimate are presented. As described previously, for most species these estimated exposure levels apply to a generic western North Atlantic stock defined by NMFS for management purposes. For the humpback and sei whale, any takes are assumed to occur to individuals of the species occurring in the specific geographic region (which may or may not be individuals from the Gulf of Maine and Nova Scotia stocks, respectively). For bottlenose dolphins, NMFS defines an offshore stock and multiple coastal stocks of dolphins, and we are not able to quantitatively determine the extent to which the estimated exposures may accrue to the oceanic versus various coastal stocks. However, because of the spatial distribution of proposed survey effort and our proposed mitigation, we assume that almost all incidents of take for bottlenose dolphins would accrue to the offshore stock.

TABLE 10—ESTIMATED INCIDENTS OF POTENTIAL EXPOSURE FOR LEVEL B HARASSMENT

Common name	Abundance estimate	Spectrum		TGS		ION		Western		CGG	
		Level B	%	Level B	%	Level B	%	Level B	%	Level B	%
North Atlantic right whale	440	64	15	12	3	11	3	6	1	1	<1
Humpback whale	1,637	46	3	72	4	7	<1	49	3	7	<1
Minke whale	20,741	428	2	219	1	12	<1	103	<1	134	1
Fin whale	3,522	341	10	1,148	33	5	<1	538	15	50	1
Sperm whale	5,353	1,145	21	3,974	74	39	1	2,001	37	1,406	26
Kogia spp	3,785	211	6	1,232	33	31	1	577	15	249	7
Beaked whales	14,491	3,497	24	13,423	93	516	4	5,095	35	3,722	26
Rough-toothed dolphin	532	206	39	270	52	13	2	127	24	183	34
Common bottlenose dolphin	97,476	38,091	39	45,041	46	2,646	3	23,849	24	9,276	10
Clymene dolphin	12,515	6,613	53	1,102	9	273	2	517	4	6,609	53
Atlantic spotted dolphin	55,436	17,421	31	45,594	82	639	1	19,063	34	6,880	12
Pantropical spotted dolphin	4,436	1,671	38	1,542	35	84	2	723	16	1,623	37
Striped dolphin	75,657	8,339	11	26,136	35	233	<1	9,191	12	6,722	9
Short-beaked common dolphin	173,486	11,312	7	57,793	33	428	<1	20,936	12	6,220	4
Risso's dolphin	7,732	772	10	3,563	46	95	1	1,627	21	831	11
Globicephala spp	18,977	2,841	15	9,834	52	217	1	4,766	25	2,043	11
Harbor porpoise	45,089	637	1	334	1	21	<1	157	<1	32	<1

''Abundance estimate'' reflects what we believe is the most appropriate abundance estimate against which to compare each applicant's estimated exposures exceeding the 160 dB rms criterion. ''%'' represents predicted exposures exceeding the Level B harassment criterion as a percentage of abundance. We do not include predicted Level A exposures because these incidents are also included as Level B exposures and inclusion of these numbers would result in double-counting.

Table 11 provides the numbers of take by Level A and Level B harassment proposed for authorization. The proposed take authorizations combine the exposure estimates displayed in Table 10, estimated potential incidents of Level A harassment derived as described above, and the average group size information discussed previously in this section for sei whale, Bryde's whale, blue whale, northern bottlenose whale, Fraser's dolphin, melon-headed whale, false killer whale, pygmy killer whale, killer whale, spinner dolphin, and white-sided dolphin. For applicant- and species-specific proposed take authorizations marked by an asterisk, the predicted exposures (Table 10) have been reduced to 30 percent of the abundance estimate. The MMPA limits our ability to authorize take incidental to a specified activity to ''small numbers'' of marine mammals and, although this concept is not defined in the statute, NMFS interprets the concept in relative terms through comparison of the estimated number of individuals expected to be taken to an estimation of the relevant species or stock size. A relative approach to small numbers has been upheld in past litigation (see, *e.g.,* CBD v. Salazar, 695 F.3d 893 (9th Cir. 2012)). Here, we propose a take authorization limit of 30 percent of a stock abundance estimate. Although 30 percent is not a hard and fast cut-off, in cases such as this where exposure estimates constitute sizable percentages of the stock abundance and there are no qualitative factors to inform why the actual percentages are likely to be lower in fact, we believe it is appropriate to limit our proposed take authorizations to reasonably ensure the levels do not exceed ''small numbers.'' Proposed mechanisms to limit take to this amount are discussed further under ''Small Numbers Analyses'' and ''Proposed Monitoring and Reporting.''

TABLE 11—NUMBERS OF POTENTIAL INCIDENTAL TAKE PROPOSED FOR AUTHORIZATION

Common name	Spectrum		TGS		ION		Western		CGG	
	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B
North Atlantic right whale	0	64	0	12	0	11	0	6	0	[1] 2
Humpback whale	16	46	22	72	12	7	2	49	22	7
Minke whale	0	428	1	219	0	12	0	103	1	134
Bryde's whale	0	2	0	2	0	2	0	2	0	2
Sei whale	0	2	0	2	0	2	0	2	0	2
Fin whale	0	341	0	*1,057	0	5	0	538	0	50
Blue whale	0	1	0	1	0	1	0	1	0	1
Sperm whale	5	1,145	4	*1,606	1	39	2	*1,606	1	1,406
Kogia spp	14	211	10	*1,136	3	31	5	577	4	249
Beaked whales	13	3,497	10	*4,347	0	516	5	*4,347	4	3,722
Northern bottlenose whale	0	4	0	4	0	4	0	4	0	4
Rough-toothed dolphin	0	*160	0	*160	0	[2] 14	0	127	0	*160
Common bottlenose dolphin	210	*29,243	162	*29,243	44	2,646	84	23,849	62	9,276
Clymene dolphin	7	*3,755	5	1,102	1	273	3	517	2	*3,755
Atlantic spotted dolphin	102	*16,631	78	*16,631	21	639	41	*16,631	30	6,880
Pantropical spotted dolphin	15	*1,331	12	*1,331	3	84	6	723	4	*1,331
Spinner dolphin	0	91	0	91	0	91	0	91	0	91
Striped dolphin	67	8,339	52	*22,697	14	233	27	9,191	20	6,722
Short-beaked common dolphin	113	11,312	87	*52,046	24	428	45	20,936	33	6,220
Fraser's dolphin	0	204	0	204	0	204	0	204	0	204
Atlantic white-sided dolphin	0	48	0	48	0	48	0	48	0	48
Risso's dolphin	56	772	43	*2,320	12	95	22	1,627	17	831
Melon-headed whale	0	50	0	50	0	50	0	50	0	50
Pygmy killer whale	0	6	0	6	0	6	0	6	0	6
False killer whale	0	28	0	28	0	28	0	28	0	28
Killer whale	0	7	0	7	0	7	0	7	0	7
Pilot whales	94	2,841	72	*5,693	20	217	38	4,766	28	2,043

TABLE 11—NUMBERS OF POTENTIAL INCIDENTAL TAKE PROPOSED FOR AUTHORIZATION—Continued

Common name	Spectrum		TGS		ION		Western		CGG	
	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B	Level A	Level B
Harbor porpoise	6	637	4	334	1	21	2	157	2	32

* Proposed take authorization limited to 30 percent of best population abundance estimate.
[1] Increased from predicted exposure of one whale (Table 10) to account for assumed minimum group size (*e.g.,* Parks and Tyack, 2005).
[2] Exposure estimate (Table 10) increased by one to account for average group size observed during AMAPPS survey effort.

Analyses and Preliminary Determinations

Negligible Impact Analyses

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality).

We first provide a generic description of our approach to the negligible impact analyses for this action, which incorporates elements of the impact assessment methodology described by Wood *et al.* (2012), before providing applicant-specific analysis. For each potential activity-related stressor, we consider the potential impacts on affected marine mammals and the likely significance of those impacts to the affected stock or population as a whole. Potential risk due to vessel collision and related mitigation measures as well as potential risk due to entanglement and contaminant spills were addressed under ''Proposed Mitigation'' and ''Potential Effects of the Specified Activity on Marine Mammals'' and are not discussed further, as there are minimal risks expected from these potential stressors.

Our analyses incorporate a simple matrix assessment approach to generate relative impact ratings that couple potential magnitude of effect on a stock and likely consequences of those effects for individuals, given biologically relevant information (*e.g.,* compensatory ability). Impact ratings are then combined with consideration of contextual information, such as the status of the stock or species, in conjunction with our proposed mitigation strategy, to ultimately inform our preliminary determinations. Figure 5 provides an overview of this framework. Elements of this approach are subjective and relative within the context of these particular actions and, overall, these analyses necessarily require the application of professional judgment.

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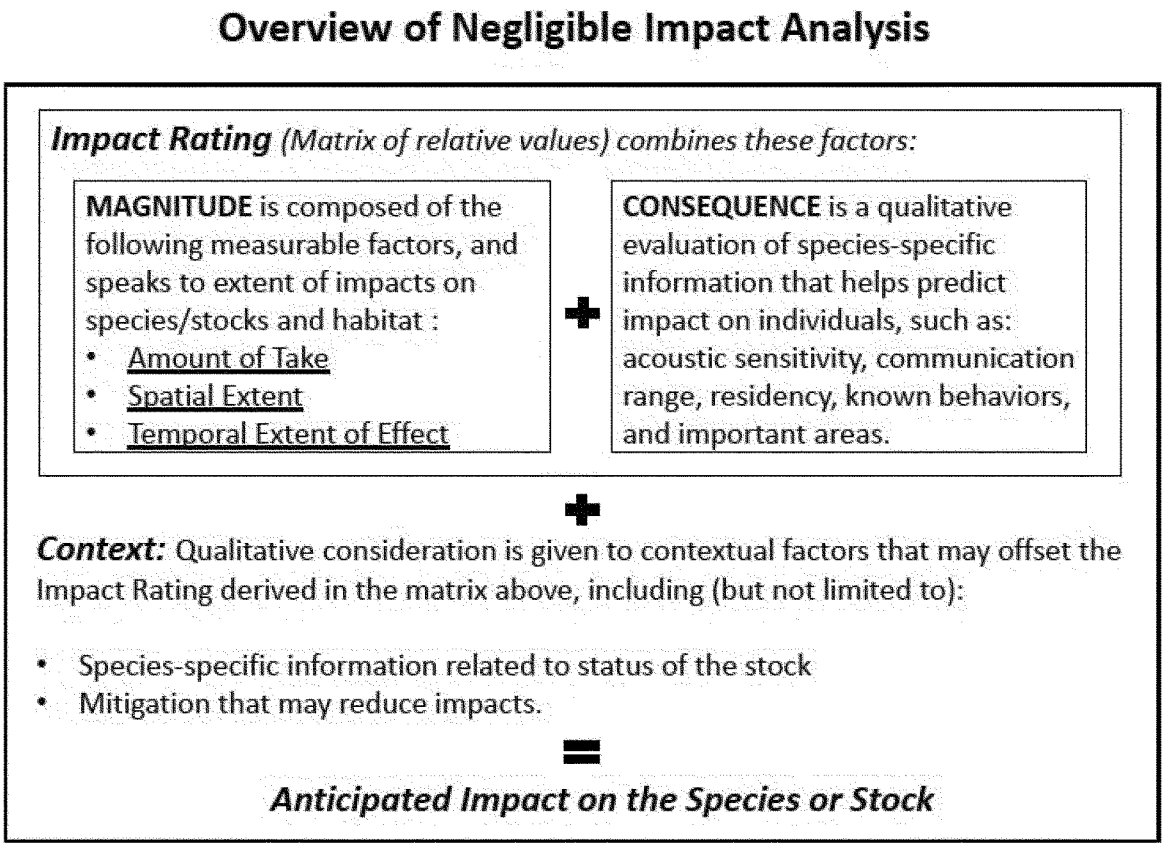

Figure 5. Overview of Negligible Impact Analysis Structure.

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Magnitude—We consider magnitude of effect as a semi-quantitative evaluation of measurable factors presented as relative ratings that address the extent of expected impacts to a species or stock and their habitat. Magnitude ratings are developed as a combination of measurable factors: The amount of take, the spatial extent of the effects in the context of the species range, and the duration of effects.

Amount of Take

We consider authorized Level B take less than five percent of population abundance to be de minimis, while authorized Level B taking between 5-15 percent is low. A moderate amount of authorized taking by Level B harassment would be from 15–25 percent, and high above 25 percent. Although we do not define quantitative metrics relating to amount of potential take by Level A harassment, for all applicant companies the expected potential for Level A harassment is expected to be low (Table 11).

Spatial Extent

Spatial extent relates to overlap of the expected range of the affected stock with the expected footprint of the stressor. While we do not define quantitative metrics relative to assessment of spatial extent, a relatively low impact would be a localized effect on the stock's range, a relatively moderate impact would be a regional-scale effect (meaning that the overlap between stressor and range was partial), and a relatively high impact would be one in which the degree of overlap between stressor and range is near total. For a mobile activity occurring over a relatively large, regional-scale area, this categorization is made largely on the basis of the stock range in relation to the action area. For example, the harbor porpoise is expected to occur almost entirely outside of the proposed survey areas (Waring *et al.,* 2016; Roberts *et al.,* 2016) and therefore despite the large extent of proposed survey activity, the spatial extent of potential stressor effect would be low. A medium degree of effect would be expected for a species such as the Risso's dolphin, which has a distribution in shelf and slope waters along the majority of the U.S. Atlantic coast, and which also would be expected to have greater abundance in mid-Atlantic waters north of the proposed survey areas in the summer (Waring *et al.,* 2016; Roberts *et al.,* 2016). This means that the extent of potential stressor for this species would at all times be expected to have some overlap with a portion of the stock, while some portion (increasing in summer and fall months) would at all times be outside the stressor footprint. A higher degree of impact with regard to spatial extent would be expected for a species such as the Clymene dolphin, which is expected to have a generally more southerly distribution (Waring *et al.,* 2016; Roberts *et al.,* 2016) and thus more nearly complete overlap with the expected stressor footprint in BOEM's Mid- and South Atlantic planning areas.

In Tables 14–18 below, spatial extent is presented as a range for certain species with known migratory patterns. We expect spatial extent (overlap of stock range with proposed survey area) to be low for right whales from May through October but moderate from November through April, due to right

whale movements into southeastern shelf waters in the winter for calving. The overlap is considered moderate during winter because not all right whales make this winter migration, and those that do are largely found in shallow waters where little survey effort is planned. Spatial extent for humpback whales is expected to be low for most of the year, but likely moderate during winter, while spatial extent for minke whales is likely low in summer, moderate in spring and fall, and high in winter. While we consider spatial extent to be low year-round for fin whales, their range overlap with the proposed survey area does vary across the seasons and is closer to moderate in winter and spring. We expect spatial extent for common dolphins to be lower in fall but generally moderate. Similarly, we expect spatial extent for Risso's dolphins to be lower in summer but generally moderate. Although proposed survey plans differ across applicant companies, all cover large spatial scales that extend throughout much of BOEM's Mid- and South Atlantic OCS planning areas, and we do not expect meaningful differences across surveys with regard to spatial extent.

Temporal Extent

We consider a temporary effect lasting up to one month (prior to the animal or habitat reverting to a ''normal'' condition) to be short-term, whereas long-term effects are more permanent, lasting beyond one season (with animals or habitat potentially reverting to a ''normal'' condition). Moderate-term is therefore defined as between 1-3 months. Duration describes how long the effects of the stressor last. Temporal frequency may range from continuous to isolated (may occur one or two times), or may be intermittent. These metrics and their potential combinations help to derive the ratings summarized in Table 12. Temporal extent is not indicated in Tables 14–18 below, as it did not affect the magnitude rating for each applicant.

TABLE 12—MAGNITUDE RATING

Amount of take	Spatial extent	Duration and frequency	Magnitude rating
High	Any	Any	High.
Any except de minimis	High	Any.	
Moderate	Moderate	Any except short-term/isolated	
Moderate	Moderate	Short-term/isolated	Medium.
Moderate	Low	Any.	
Low	Moderate	Any.	
Low	Low	Any except short-term/intermittent or isolated	
Low	Low	Short-term/intermittent or isolated	Low.
De minimis	Any	Any	De minimis.

Adapted from Table 3.4 of Wood *et al.* (2012).

Likely Consequences—These considerations of amount, extent, and duration give an understanding of expected magnitude of effect for the stock or species and their habitat, which is then considered in context of the likely consequences of those effects for individuals. We consider likely relative consequences through a qualitative evaluation of species-specific information that helps predict the consequences of the known information addressed through the magnitude rating, *i.e.,* expected effects. This evaluation considers factors including acoustic sensitivity, communication range, known aspects of behavior relevant to a consideration of consequences of effects, and assumed compensatory abilities to engage in important behaviors (*e.g.,* breeding, foraging) in alternate areas. The magnitude rating and likely consequences are combined to produce an impact rating (Table 13).

For example, if a delphinid species is predicted to have a high amount of disturbance and over a high degree of spatial extent, that stock would receive a high magnitude rating for that particular proposed survey. However, we may then assess that the species may have a high degree of compensatory ability; therefore, our conclusion would be that the consequences of any effects are likely low. The overall impact rating in this scenario would be moderate. Table 13 summarizes impact rating scenarios.

TABLE 13—IMPACT RATING

Magnitude rating	Consequences (for individuals)	Impact rating
High	High/medium	High.
High	Low	Moderate.
Medium	High/medium	
Low	High	
Medium	Low	Low.
Low	Medium/low	
De minimis	Any	De minimis.

Adapted from Table 3.5 of Wood *et al.* (2012).

Likely consequences, as presented in Tables 14–18 below, are considered medium for each species of mysticete whales with greater than a de minimis amount of exposure, due to the greater potential that survey noise may subject individuals of these species to masking of acoustic space for social purposes (*i.e.,* they are low frequency hearing specialists). Likely consequences are considered medium for sperm whales due to potential for survey noise to disrupt foraging activity. The likely consequences are considered high for beaked whales due to the combination of known acoustic sensitivity and expected residency patterns, as we expect that compensatory ability for beaked whales will be low due to presumed residency in certain shelf break and deepwater canyon areas covered by the proposed survey area. Similarly, *Kogia* spp. are presumed to be a more acoustically sensitive species, but unlike beaked whales we expect that *Kogia* spp. would have a reasonable compensatory ability to perform important behavior in alternate areas, as they are expected to occur broadly over the continental slope (*e.g.,* Bloodworth and Odell, 2008)—therefore, we assume that consequences would be low for *Kogia* spp. generally. Consequences are considered low for most delphinids, as it is unlikely that disturbance due to survey noise would entail significant disruption of normal behavioral patterns, long-term displacement, or significant potential for masking of acoustic space. However, for pilot whales we believe likely consequences to be medium due to expected residency in areas of importance and, therefore, lack of compensatory ability. Because the nature of the stressor is the same across applicant companies, we do not expect meaningful differences with regard to likely consequences.

Context—In addition to impact ratings, we then also consider additional relevant contextual factors in a

qualitative fashion. This consideration of context is applied to a given impact rating in order to produce a final assessment of impact to the stock or species, *i.e.,* our preliminary negligible impact determinations. Relevant contextual factors include population status, other stressors, and proposed mitigation.

Here, we reiterate discussion relating to our development of targeted mitigation measures and note certain contextual factors, which are applicable to negligible impact analyses for all five applicant companies. Applicant-specific analyses are provided later.

• We developed mitigation requirements (*i.e.,* time-area restrictions) designed specifically to provide benefit to certain species or stocks for which we predict a relatively moderate to high amount of exposure to survey noise and/or which have contextual factors that we believe necessitate special consideration. The proposed time-area restrictions, described in detail in ''Proposed Mitigation'' and depicted in Figures 3–4), are designed specifically to provide benefit to the North Atlantic right whale, bottlenose dolphin, sperm whale, beaked whales, pilot whales, and Atlantic spotted dolphin. In addition, we expect these areas to provide some subsidiary benefit to additional species that may be present. In particular, Area #5 (Figure 4), although delineated in order to specifically provide an area of anticipated benefit to beaked whales, sperm whales, and pilot whales, is expected to host a diverse assemblage of cetacean species. The output of the Roberts *et al.* (2016) models, as used in core abundance area analyses (described in detail in ''Proposed Mitigation''), indicates that species most likely to derive subsidiary benefit from this time-area restriction include the bottlenose dolphin (offshore stock), Risso's dolphin, and common dolphin. For species with density predicted through stratified models, core abundance analysis is not possible and assumptions regarding potential benefit of time-area restrictions are based on known ecology of the species and sightings patterns and are less robust. Nevertheless, subsidiary benefit for Areas #2–5 (Figure 4) should be expected for species known to be present in these areas (*e.g.,* assumed affinity for shelf/slope/abyss areas off Cape Hatteras): *Kogia* spp., pantropical spotted dolphin, Clymene dolphin, and rough-toothed dolphin.

These proposed measures benefit both the primary species for which they were designed and the species that may benefit secondarily by reducing the likely number of individuals exposed to survey noise and, for resident species in areas where seasonal closures are proposed, reducing the numbers of times that individuals are exposed to survey noise (also discussed in ''Small Numbers Analyses,'' below). However, and perhaps of greater importance, we expect that these restrictions will reduce disturbance of these species in the places most important to them for critical behaviors such as foraging and socialization. Area #2 (Figure 4), which is proposed as a year-round closure, is assumed to be an area important for beaked whale foraging, while Areas #3–4 (also proposed as year-round closures) are assumed to provide important foraging opportunities for sperm whales as well as beaked whales. Area #5, proposed as a seasonal closure, is comprised of shelf-edge habitat where beaked whales and pilot whales are believed to be year-round residents as well as slope and abyss habitat predicted to contain high abundance of sperm whales during the period of closure. Further detail regarding rationale for these closures is provided under ''Proposed Mitigation.''

• The North Atlantic right whale, sei whale, fin whale, blue whale, and sperm whale are listed as endangered under the Endangered Species Act, and all coastal stocks of bottlenose dolphin are designated as depleted under the MMPA (and have recently experienced an unusual mortality event, described earlier in this document). However, sei whales and blue whales are unlikely to be meaningfully impacted by the proposed activities (see ''Rare Species'' below). All four mysticete species are also classified as endangered (*i.e.,* ''considered to be facing a very high risk of extinction in the wild'') on the International Union for Conservation of Nature Red List of Threatened Species, whereas the sperm whale is classified as vulnerable (*i.e.,* ''considered to be facing a high risk of extinction in the wild'') (IUCN, 2016). Our proposed mitigation is designed to avoid impacts to the right whale and to depleted stocks of bottlenose dolphin. Survey activities must avoid all areas where the right whale and coastal stocks of bottlenose dolphin may be reasonably expected to occur, and we propose to require shutdown of the acoustic source upon observation of any right whale at any distance. If the observed right whale is within the behavioral harassment zone, it would still be considered to have experienced harassment, but by immediately shutting down the acoustic source the duration of harassment is minimized and the significance of the harassment event reduced as much as possible.

Although listed as endangered, the primary threat faced by the sperm whale (*i.e.,* commercial whaling) has been eliminated and, further, sperm whales in the western North Atlantic were little affected by modern whaling (Taylor *et al.,* 2008). Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. However, for the North Atlantic stock, the most recent estimate of annual human-caused mortality and serious injury (M/SI) is just 22 percent of the potential biological removal (PBR) level for the stock. As described previously, PBR is defined 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.'' For depleted stocks, levels of human-caused mortality and serious injury exceeding the PBR level are likely to delay restoration of the stock to OSP level by more than ten percent in comparison with recovery time in the absence of human-caused M/SI.

The most recent status review for the species stated that existing regulatory mechanisms appear to minimize threats to sperm whales and that, despite uncertainty regarding threats such as climate change, contaminants, and anthropogenic noise, the significance of threat facing the species should be considered low to moderate (NMFS, 2015b). Nevertheless, existing empirical data (*e.g.,* Miller *et al.,* 2009) highlight the potential for seismic survey activity to negatively impact foraging behavior of sperm whales. In consideration of this likelihood, the species status, and the relatively high amount of predicted exposures to survey noise, we have given special consideration to mitigation focused on sperm whales and have defined time-area restrictions (see ''Proposed Mitigation'' and Figure 4) specifically designed to reduce such impacts on sperm whales in areas expected to be of greatest importance (*i.e.,* slope habitat and deepwater canyons).

Although the primary direct threat to fin whales was addressed through the moratorium on commercial whaling, vessel strike and entanglement in commercial fishing gear remain as substantive direct threats for the species in the western North Atlantic. As noted below, the most recent estimate of annual average human-caused mortality for the fin whale in U.S. waters is above the PBR value (Table 4). In addition, the mysticete whales are particularly sensitive to sound in the frequency

range output from use of airgun arrays (*e.g.,* NMFS, 2016). However, there is conflicting evidence regarding the degree to which this sound source may significantly disrupt the behavior of mysticete whales. Generally speaking, mysticete whales have been observed to react to seismic vessels but have also been observed continuing normal behavior in the presence of seismic vessels, and behavioral context at the time of acoustic exposure may be influential in the degree to which whales display significant behavioral reactions. In addition, while Edwards *et al.* (2015) found that fin whales were likely present in all seasons in U.S. waters north of 35° N., most important habitat areas are not expected to occur in the proposed survey areas. Primary feeding areas are outside the project area in the Gulf of Maine and off Long Island (LaBrecque *et al.,* 2015) and, while Hain *et al.* (1992) suggested that calving occurs during winter in the mid-Atlantic, Waring *et al.* (2016) state that it is unknown where calving, mating, and wintering occur for most of the population. Further, fin whales are not considered to engage in regular mass movements along well-defined migratory corridors (NMFS, 2010b). The model described by Roberts *et al.* (2016), which predicted density at a monthly time step, suggests an expectation that, while fin whales may be present year-round in shelf and slope waters north of Cape Hatteras, the large majority of predicted abundance in U.S. waters would be found outside the proposed survey areas to the north. Very few fin whales are likely present in the proposed survey areas in summer months. Therefore, we have determined that development of time-area restriction specific to fin whales is not warranted. However, fin whales present along the shelf break north of Cape Hatteras during the closure period associated with Area #5 (Figure 4) would be expected to benefit from the time-area restriction designed primarily to benefit pilot whales, beaked whales, and sperm whales.

• Critical habitat is designated only for the North Atlantic right whale, and there are no biologically important areas (BIA) described within the region (other than for the right whale, and the described BIA is similar to designated critical habitat). Our proposed mitigation is designed to minimize impacts to important habitat for the North Atlantic right whale.

• Average annual human-caused M/SI exceeds the PBR level for the North Atlantic right whale, sei whale, fin whale, and for both long-finned and short-finned pilot whales (see Table 4). Average annual M/SI is considered unknown for the blue whale and the false killer whale (PBR is undetermined for a number of other species (Table 4), but average annual human-caused M/SI is zero for all of these). Although threats are considered poorly known for North Atlantic blue whales, PBR is less than one and ship strike is a known cause of mortality for all mysticete whales. The most recent record of ship strike mortality for a blue whale in the U.S. EEZ is from 1998 (Waring *et al.,* 2010). False killer whales also have a low PBR value (2.1), and may be susceptible to mortality in commercial fisheries. One false killer whale was reported as entangled in the pelagic longline fishery in 2011, but was released alive and not seriously injured. Separately, a stranded false killer whale in 2009 was classified as due to a fishery interaction. Incidental take of the sei whale, blue whale, false killer whale, and long-finned pilot whale is considered unlikely and we propose to authorize take by behavioral harassment only for a single group of each of the first three species as a precaution. Although long-finned pilot whales are unlikely to occur in the action area in significant numbers, the density models that inform our exposure estimates consider pilot whales as a guild. It is important to note that our discussion of M/SI in relation to PBR values provides necessary contextual information related to the status of stocks; we do not equate harassment (as defined by the MMPA) with M/SI.

We addressed our consideration of specific mitigation efforts for the right whale and fin whale above. In response to this population context concern for pilot whales, in conjunction with relatively medium to high amount of predicted exposures to survey noise for pilot whales, we have given special consideration to mitigation focused on pilot whales and have defined time-area restrictions (see ''Proposed Mitigation'' and Figure 4) specifically designed to reduce such impacts on pilot whales in areas expected to be of greatest importance (*i.e.,* shelf edge north of Cape Hatteras).

• Beaked whales are considered to be particularly acoustically sensitive (*e.g.,* Tyack *et al.,* 2011; DeRuiter *et al.,* 2013; Stimpert *et al.,* 2014; Miller *et al.,* 2015). Considering this sensitivity in conjunction with the relatively high amount of predicted exposures to survey noise we have given special consideration to mitigation focused on beaked whales and have defined time-area restrictions (see ''Proposed Mitigation'' and Figure 4) specifically designed to reduce such impacts on beaked whales in areas expected to be of greatest importance (*i.e.,* shelf edge south of Cape Hatteras and deepwater canyon areas).

Rare Species—As described previously, there are multiple species that should be considered rare in the proposed survey areas and for which we propose to authorize only nominal and precautionary take of a single group. Specific to each of the five applicant companies, we do not expect meaningful impacts to these species (*i.e.,* sei whale, Bryde's whale, blue whale, killer whale, false killer whale, pygmy killer whale, melon-headed whale, northern bottlenose whale, spinner dolphin, Fraser's dolphin, Atlantic white-sided dolphin) and preliminarily find that the total marine mammal take from each of the specified activities will have a negligible impact on these marine mammal species. We do not discuss these 11 species further in these analyses.

Spectrum—Spectrum proposes a 165-day survey program, or 45 percent of the year (approximately two seasons). However, the proposed survey would cover a large spatial extent (*i.e.,* a majority of the mid- and south Atlantic; see Figure 1 of Spectrum's application). Therefore, although the survey would be long-term (*i.e.,* greater than one season) in total duration, we would not expect the duration of effect to be greater than moderate and intermittent in any given area. Table 14 displays relevant information leading to impact ratings for each species resulting from Spectrum's proposed survey. In general, we note that although the temporal and spatial scale of the proposed survey activity is large, the fact that this mobile acoustic source would be moving across large areas (as compared with geophysical surveys with different objectives that may require focused effort over long periods of time in smaller areas) means that many individuals may receive limited exposure to survey noise. The nature of such potentially transitory exposure (which we nevertheless assume here is of moderate duration and intermittent, versus isolated) means that the potential significance of behavioral disruption and potential for longer-term avoidance of important areas is limited.

TABLE 14—MAGNITUDE AND IMPACT RATINGS, SPECTRUM

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
North Atlantic right whale	Low	Low-Moderate	Medium	Medium	Moderate.
Humpback whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Minke whale	De minimis	Low-High	De minimis	n/a	De minimis.
Fin whale	Low	Low	Medium	Medium	Moderate.
Sperm whale	Moderate	Moderate	High	Medium	High.
Kogia spp	Low	High	High	Low	Moderate.
Beaked whales	Moderate	Moderate	High	High	High.
Rough-toothed dolphin	High	High	High	Low	Moderate.
Common bottlenose dolphin	High	High	High	Low	Moderate.
Clymene dolphin	High	High	High	Low	Moderate.
Atlantic spotted dolphin	High	Moderate	High	Low	Moderate.
Pantropical spotted dolphin	High	High	High	Low	Moderate.
Striped dolphin	Low	Low	Medium	Low	Low.
Short-beaked common dolphin	Low	Low-moderate	Medium	Low	Low.
Risso's dolphin	Low	Low-moderate	Medium	Low	Low.
Pilot whales	Low	Moderate	Medium	Medium	Moderate.
Harbor porpoise	De minimis	Low	De minimis	n/a	De minimis.

The North Atlantic right whale is endangered, has a very low population size, and faces significant additional stressors. Therefore, regardless of impact rating, we believe that the proposed mitigation described previously is important in order for us to make the necessary finding and, in consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on the North Atlantic right whale. The fin whale receives a moderate impact rating overall, but we expect that for two seasons (summer and fall) almost no fin whales will be present in the proposed survey area. For the remainder of the year, it is likely that less than one quarter of the population will be present within the proposed survey area (Roberts *et al.,* 2016), meaning that despite medium rankings for magnitude and likely consequences, these impacts would be experienced by only a small subset of the overall population. In consideration of the moderate impact rating, the likely proportion of the population that may be affected by the specified activities, and the lack of evidence that the proposed survey area is host to important behavior that may be disrupted, we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on the fin whale.

Magnitude ratings for the sperm whale and beaked whales are high and, further, consequence factors reinforce high impact ratings for both. Magnitude rating for pilot whales is medium but, similar to beaked whales, we expect that compensatory ability will be low due to presumed residency in areas targeted by the proposed survey—leading to a moderate impact rating. However, regardless of impact rating, the consideration of likely consequences and contextual factors leads us to conclude that targeted mitigation is important to support a finding that the effects of the proposed survey will have a negligible impact on these species. As described previously, sperm whales are an endangered species with particular susceptibility to disruption of foraging behavior, beaked whales are particularly acoustically sensitive (with presumed low compensatory ability), and pilot whales are sensitive to additional stressors due to a high degree of mortality in commercial fisheries (and also with low compensatory ability). Finally, due to their acoustic sensitivity, we have proposed shutdown of the acoustic source upon observation of a beaked whale at any distance from the source vessel. In consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on the sperm whale, beaked whales (*i.e., Ziphius cavirostris* and *Mesoplodon* spp.), and pilot whales (*i.e., Globicephala* spp.).

Kogia spp. receive a moderate impact rating. However, although NMFS does not currently identify a trend for these populations, recent survey effort and stranding data show a simultaneous increase in at-sea abundance and strandings, suggesting growing *Kogia* spp. abundance (NMFS, 2011; 2013a; Waring *et al.,* 2007; 2013). Finally, we expect that *Kogia* spp. will receive subsidiary benefit from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales and, although minimally effective due to the difficulty of at-sea observation of *Kogia* spp., we have proposed shutdown of the acoustic source upon observation of *Kogia* spp. at any distance from the source vessel. In consideration of these factors—likely population increase and proposed mitigation—we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on *Kogia* spp.

Despite medium to high magnitude ratings, remaining delphinid species receive low to moderate impact ratings due to a lack of propensity for behavioral disruption due to geophysical survey activity and our expectation that these species would generally have relatively high compensatory ability. In addition, these species do not have significant issues relating to population status or context. Many oceanic delphinid species are generally more associated with dynamic oceanographic characteristics rather than static physical features, and those species (such as common dolphin) with substantial distribution to the north of the proposed survey area would likely be little affected at the population level by the proposed activity. For example, both species of spotted dolphin and the offshore stock of bottlenose dolphin range widely over slope and abyssal waters (*e.g.,* Waring *et al.,* 2016; Roberts *et al.,* 2016), while the rough-toothed dolphin does not appear bound by water depth in its range (Ritter, 2002; Wells *et al.,* 2008). Our proposed mitigation largely eliminates potential effects to depleted coastal stocks of bottlenose dolphin, and provides substantial benefit to the on-shelf portion of the Atlantic spotted dolphin population. We also expect that meaningful subsidiary benefit will accrue to certain species from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales, most notably

to species presumed to have greater association with shelf break waters north of Cape Hatteras (*e.g.,* offshore bottlenose dolphins, common dolphins, and Risso's dolphins). In consideration of these factors—overall impact ratings and proposed mitigation—we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on remaining delphinid species (*i.e.,* all stocks of bottlenose dolphin, two species of spotted dolphin, rough-toothed dolphin, striped dolphin, common dolphin, Clymene dolphin, and Risso's dolphin).

For those species with de minimis impact ratings we believe that, absent additional relevant concerns related to population status or context, the rating implies that a negligible impact should be expected as a result of the specified activity. No such concerns exist for these species, and we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on the humpback whale, minke whale, and harbor porpoise.

In summary, 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, we preliminarily find that the total marine mammal take from Spectrum's proposed survey activities will have a negligible impact on all affected marine mammal species or stocks.

TGS—TGS proposes a 308-day survey program, or 84 percent of the year (slightly more than three seasons). However, the proposed survey would cover a large spatial extent (*i.e.,* a majority of the mid- and south Atlantic; see Figures 1–1 to 1–4 of TGS's application). Therefore, although the survey would be long-term (*i.e.,* greater than one season) in total duration, we would not expect the duration of effect to be greater than moderate and intermittent in any given area. We note that TGS proposes to deploy two independent source vessels, which would in effect increase the spatial extent of survey noise at any one time but, because the vessels would not be operating within the same area or reshooting lines already covered, this would not be expected to increase the duration or frequency of exposure experienced by individual animals. Table 15 displays relevant information leading to impact ratings for each species resulting from TGS's proposed survey. In general, we note that although the temporal and spatial scale of the proposed survey activity is large, the fact that the mobile acoustic sources would be moving across large areas (as compared with geophysical surveys with different objectives that may require focused effort over long periods of time in smaller areas) means that many individuals may receive limited exposure to survey noise. The nature of such potentially transitory exposure (which we nevertheless assume here is of moderate duration and intermittent, versus isolated) means that the potential significance of behavioral disruption and potential for longer-term avoidance of important areas is limited.

TABLE 15—MAGNITUDE AND IMPACT RATINGS, TGS

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
North Atlantic right whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Humpback whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Minke whale	De minimis	Low-High	De minimis	n/a	De minimis.
Fin whale	High	Low	High	Medium	High.
Sperm whale	High	Moderate	High	Medium	High.
Kogia spp	High	High	High	Low	Moderate.
Beaked whales	High	Moderate	High	High	High.
Rough-toothed dolphin	High	High	High	Low	Moderate.
Common bottlenose dolphin	High	High	High	Low	Moderate.
Clymene dolphin	Low	High	High	Low	Moderate.
Atlantic spotted dolphin	High	Moderate	High	Low	Moderate.
Pantropical spotted dolphin	High	High	High	Low	Moderate.
Striped dolphin	High	Low	High	Low	Moderate.
Short-beaked common dolphin	High	Low-moderate	High	Low	Moderate.
Risso's dolphin	High	Low-moderate	High	Low	Moderate.
Pilot whales	High	Moderate	High	Medium	High.
Harbor porpoise	De minimis	Low	De minimis	n/a	De minimis.

The North Atlantic right whale is endangered, has a very low population size, and faces significant additional stressors. Therefore, regardless of impact rating, we believe that the proposed mitigation described previously is important in order for us to make the necessary finding and, in consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from TGS's proposed survey activities will have a negligible impact on the North Atlantic right whale. The fin whale receives a high impact rating overall, due to the high amount of exposure predicted for TGS's proposed survey activity. As described previously, we expect that for two seasons (summer and fall) almost no fin whales will be present in the proposed survey area and that, for the remainder of the year, it is likely that less than one quarter of the population will be present within the proposed survey area (Roberts *et al.,* 2016), meaning that these impacts would be experienced by only a small subset of the overall population. However, given the high amount of predicted exposure, we believe that additional mitigation requirements are warranted and propose that TGS be subject to a shutdown requirement for fin whales. If the observed fin whale is within the behavioral harassment zone, it would still be considered to have experienced harassment, but by immediately shutting down the acoustic source the duration of harassment is minimized and the significance of the harassment event reduced as much as possible. In consideration of the likely proportion of the population that may be affected by the specified activities, the lack of evidence that the proposed survey area is host to important behavior that may be disrupted, and the proposed mitigation, we preliminarily find that the total marine mammal take from TGS's proposed survey activities

will have a negligible impact on the fin whale.

Magnitude ratings for the sperm whale, beaked whales, and pilot whales are high and, further, consequence factors reinforce high impact ratings for all three. In addition, regardless of impact rating, the consideration of likely consequences and contextual factors leads us to conclude that targeted mitigation is important to support a finding that the effects of the proposed survey will have a negligible impact on these species. As described previously, sperm whales are an endangered species with particular susceptibility to disruption of foraging behavior, beaked whales are particularly acoustically sensitive (with presumed low compensatory ability), and pilot whales are sensitive to additional stressors due to a high degree of mortality in commercial fisheries (and also with low compensatory ability). Finally, due to their acoustic sensitivity, we have proposed shutdown of the acoustic source upon observation of a beaked whale at any distance from the source vessel. In consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from TGS's proposed survey activities will have a negligible impact on the sperm whale, beaked whales (*i.e., Ziphius cavirostris* and *Mesoplodon* spp.), and pilot whales (*i.e., Globicephala* spp.).

Kogia spp. receive a moderate impact rating. However, although NMFS does not currently identify a trend for these populations, recent survey effort and stranding data show a simultaneous increase in at-sea abundance and strandings, suggesting growing *Kogia* spp. abundance (NMFS, 2011; 2013a; Waring *et al.,* 2007; 2013). Finally, we expect that *Kogia* spp. will receive subsidiary benefit from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales and, although minimally effective due to the difficulty of at-sea observation of *Kogia* spp., we have proposed shutdown of the acoustic source upon observation of *Kogia* spp. at any distance from the source vessel. In consideration of these factors—likely population increase and proposed mitigation—we preliminarily find that the total marine mammal take from TGS's proposed survey activities will have a negligible impact on *Kogia* spp.

Despite high magnitude ratings, remaining delphinid species receive moderate impact ratings due to a lack of propensity for behavioral disruption due to geophysical survey activity and our expectation that these species would generally have relatively high compensatory ability. In addition, these species do not have significant issues relating to population status or context. Many oceanic delphinid species are generally more associated with dynamic oceanographic characteristics rather than static physical features, and those species (such as common dolphin) with substantial distribution to the north of the proposed survey area would likely be little affected at the population level by the proposed activity. For example, both species of spotted dolphin and the offshore stock of bottlenose dolphin range widely over slope and abyssal waters (*e.g.,* Waring *et al.,* 2016; Roberts *et al.,* 2016), while the rough-toothed dolphin does not appear bound by water depth in its range (Ritter, 2002; Wells *et al.,* 2008). Our proposed mitigation largely eliminates potential effects to depleted coastal stocks of bottlenose dolphin, and provides substantial benefit to the on-shelf portion of the Atlantic spotted dolphin population. We also expect that meaningful subsidiary benefit will accrue to certain species from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales, most notably to species presumed to have greater association with shelf break waters north of Cape Hatteras (*e.g.,* offshore bottlenose dolphins, common dolphins, and Risso's dolphins). In consideration of these factors—overall impact ratings and proposed mitigation—we preliminarily find that the total marine mammal take from TGS's proposed survey activities will have a negligible impact on remaining delphinid species (*i.e.,* all stocks of bottlenose dolphin, two species of spotted dolphin, rough-toothed dolphin, striped dolphin, common dolphin, Clymene dolphin, and Risso's dolphin).

For those species with de minimis impact ratings we believe that, absent additional relevant concerns related to population status or context, the rating implies that a negligible impact should be expected as a result of the specified activity. No such concerns exist for these species, and we preliminarily find that the total marine mammal take from TGS's proposed survey activities will have a negligible impact on the humpback whale, minke whale, and harbor porpoise.

In summary, 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, we preliminarily find that the total marine mammal take from TGS's proposed survey activities will have a negligible impact on all affected marine mammal species or stocks.

ION—ION proposes a 70-day survey program, or 19 percent of the year (slightly less than one season). However, the proposed survey would cover a large spatial extent (*i.e.,* a majority of the mid- and south Atlantic; see Figure 1 of ION's application). Therefore, although the survey would be moderate-term (*i.e.,* from 1–3 months) in total duration, we would not expect the duration of effect to be greater than short and isolated to intermittent in any given area. Table 16 displays relevant information leading to impact ratings for each species resulting from ION's proposed survey. In general, we note that although the spatial scale of the proposed survey activity is large, the fact that this mobile acoustic source would be moving across large areas (as compared with geophysical surveys with different objectives that may require focused effort over long periods of time in smaller areas) means that many individuals may receive limited exposure to survey noise. The nature of such potentially transitory exposure means that the potential significance of behavioral disruption and potential for longer-term avoidance of important areas is limited.

TABLE 16—MAGNITUDE AND IMPACT RATINGS, ION

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
North Atlantic right whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Humpback whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Minke whale	De minimis	Low-High	De minimis	n/a	De minimis.
Fin whale	De minimis	Low	De minimis	n/a	De minimis.
Sperm whale	De minimis	Moderate	De minimis	n/a	De minimis.
Kogia spp	De minimis	High	De minimis	n/a	De minimis.
Beaked whales	De minimis	Moderate	De minimis	n/a	De minimis.

TABLE 16—MAGNITUDE AND IMPACT RATINGS, ION—Continued

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
Rough-toothed dolphin	De minimis	High	De minimis	n/a	De minimis.
Common bottlenose dolphin	De minimis	High	De minimis	n/a	De minimis.
Clymene dolphin	De minimis	High	De minimis	n/a	De minimis.
Atlantic spotted dolphin	De minimis	Moderate	De minimis	n/a	De minimis.
Pantropical spotted dolphin	De minimis	High	De minimis	n/a	De minimis.
Striped dolphin	De minimis	Low	De minimis	n/a	De minimis.
Short-beaked common dolphin	De minimis	Low-moderate	De minimis	n/a	De minimis.
Risso's dolphin	De minimis	Low-moderate	De minimis	n/a	De minimis.
Pilot whales	De minimis	Moderate	De minimis	n/a	De minimis.
Harbor porpoise	De minimis	Low	De minimis	n/a	De minimis.

The North Atlantic right whale is endangered, has a very low population size, and faces significant additional stressors. Therefore, regardless of impact rating, we believe that the proposed mitigation described previously is important in order for us to make the necessary finding and, in consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from ION's proposed survey activities will have a negligible impact on the North Atlantic right whale.

Also regardless of impact rating, consideration of assumed behavioral susceptibility and lack of compensatory ability (*i.e.,* the consequence factors that are disregarded in our matrix assessment for ION) as well as additional contextual factors leads us to conclude that the proposed targeted time-area mitigation described previously is important to support a finding that the effects of the proposed survey will have a negligible impact for the sperm whale, beaked whales (*i.e., Ziphius cavirostris* and *Mesoplodon* spp.), and pilot whales (*i.e., Globicephala* spp.). As described previously, sperm whales are an endangered species with particular susceptibility to disruption of foraging behavior, beaked whales are particularly acoustically sensitive, and pilot whales are sensitive to additional stressors due to a high degree of mortality in commercial fisheries. Further, we expect that compensatory ability for beaked whales will be low due to presumed residency in certain shelf break and deepwater canyon areas covered by the proposed survey area and that compensatory ability for pilot whales will also be low due to presumed residency in areas targeted by the proposed survey. *Kogia* spp. are also considered to have heightened acoustic sensitivity and therefore we have proposed shutdown of the acoustic source upon observation of a beaked whale or a *Kogia* spp. at any distance from the source vessel. In consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from ION's proposed survey activities will have a negligible impact on the sperm whale, beaked whales, pilot whales, and *Kogia* spp.

For those species with de minimis impact ratings we believe that, absent additional relevant concerns related to population status or context, the rating implies that a negligible impact should be expected as a result of the specified activity. No such concerns exist for these species, and we preliminarily find that the total marine mammal take from ION's proposed survey activities will have a negligible impact on all stocks of bottlenose dolphin, two species of spotted dolphin, rough-toothed dolphin, striped dolphin, common dolphin, Clymene dolphin, Risso's dolphin humpback whale, minke whale, fin whale, and harbor porpoise.

In summary, 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, we preliminarily find that the total marine mammal take from ION's proposed survey activities will have a negligible impact on all affected marine mammal species or stocks.

Western—Western proposes a 208-day survey program, or 57 percent of the year (slightly more than two seasons). However, the proposed survey would cover a large spatial extent (*i.e.,* a majority of the mid- and south Atlantic; see Figures 1–1 to 1–4 of Western's application). Therefore, although the survey would be long-term (*i.e.,* greater than one season) in total duration, we would not expect the duration of effect to be greater than moderate and intermittent in any given area. Table 17 displays relevant information leading to impact ratings for each species resulting from Western's proposed survey. In general, we note that although the temporal and spatial scale of the proposed survey activity is large, the fact that this mobile acoustic source would be moving across large areas (as compared with geophysical surveys with different objectives that may require focused effort over long periods of time in smaller areas) means that many individuals may receive limited exposed to survey noise. The nature of such potentially transitory exposure (which we nevertheless assume here is of moderate duration and intermittent, versus isolated) means that the potential significance of behavioral disruption and potential for longer-term avoidance of important areas is limited.

TABLE 17—MAGNITUDE AND IMPACT RATINGS, WESTERN

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
North Atlantic right whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Humpback whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Minke whale	De minimis	Low-High	De minimis	n/a	De minimis.
Fin whale	Low	Low	Medium	Medium	Moderate.
Sperm whale	High	Moderate	High	Medium	High.
Kogia spp	Low	High	High	Low	Moderate.
Beaked whales	High	Moderate	High	High	High.
Rough-toothed dolphin	Moderate	High	High	Low	Moderate.

TABLE 17—MAGNITUDE AND IMPACT RATINGS, WESTERN—Continued

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
Common bottlenose dolphin	Moderate	High	High	Low	Moderate.
Clymene dolphin	De minimis	High	De minimis	n/a	De minimis.
Atlantic spotted dolphin	High	Moderate	High	Low	Moderate.
Pantropical spotted dolphin	Moderate	High	High	Low	Moderate.
Striped dolphin	Low	Low	Medium	Low	Low.
Short-beaked common dolphin	Low	Low-moderate	Medium	Low	Low.
Risso's dolphin	Moderate	Low-moderate	High	Low	Moderate.
Pilot whales	Moderate	Moderate	High	Medium	High.
Harbor porpoise	De minimis	Low	De minimis	n/a	De minimis.

The North Atlantic right whale is endangered, has a very low population size, and faces significant additional stressors. Therefore, regardless of impact rating, we believe that the proposed mitigation described previously is important in order for us to make the necessary finding and, in consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from Western's proposed survey activities will have a negligible impact on the North Atlantic right whale. The fin whale receives a moderate impact rating overall, but we expect that for two seasons (summer and fall) almost no fin whales will be present in the proposed survey area. For the remainder of the year, it is likely that less than one quarter of the population will be present within the proposed survey area (Roberts *et al.,* 2016), meaning that despite medium rankings for magnitude and likely consequences, these impacts would be experienced by only a small subset of the overall population. In consideration of the moderate impact rating, the likely proportion of the population that may be affected by the specified activities, and the lack of evidence that the proposed survey area is host to important behavior that may be disrupted, we preliminarily find that the total marine mammal take from Western's proposed survey activities will have a negligible impact on the fin whale.

Magnitude ratings for the sperm whale, beaked whales, and pilot whales are high and, further, consequence factors reinforce high impact ratings for all three. In addition, regardless of impact rating, the consideration of likely consequences and contextual factors leads us to conclude that targeted mitigation is important to support a finding that the effects of the proposed survey will have a negligible impact on these species. As described previously, sperm whales are an endangered species with particular susceptibility to disruption of foraging behavior, beaked whales are particularly acoustically sensitive (with presumed low compensatory ability), and pilot whales are sensitive to additional stressors due to a high degree of mortality in commercial fisheries (and also with low compensatory ability). Finally, due to their acoustic sensitivity, we have proposed shutdown of the acoustic source upon observation of a beaked whale at any distance from the source vessel. In consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from Western's proposed survey activities will have a negligible impact on the sperm whale, beaked whales (*i.e., Ziphius cavirostris* and *Mesoplodon* spp.), and pilot whales (*i.e., Globicephala* spp.).

Kogia spp. receive a moderate impact rating. However, although NMFS does not currently identify a trend for these populations, recent survey effort and stranding data show a simultaneous increase in at-sea abundance and strandings, suggesting growing *Kogia* spp. abundance (NMFS, 2011; 2013a; Waring *et al.,* 2007; 2013). Finally, we expect that *Kogia* spp. will receive subsidiary benefit from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales and, although minimally effective due to the difficulty of at-sea observation of *Kogia* spp., we have proposed shutdown of the acoustic source upon observation of *Kogia* spp. at any distance from the source vessel. In consideration of these factors—likely population increase and proposed mitigation—we preliminarily find that the total marine mammal take from Western's proposed survey activities will have a negligible impact on *Kogia* spp.

Despite medium to high magnitude ratings (with the exception of the Clymene dolphin), remaining delphinid species receive low to moderate impact ratings due to a lack of propensity for behavioral disruption due to geophysical survey activity and our expectation that these species would generally have relatively high compensatory ability. In addition, these species do not have significant issues relating to population status or context. Many oceanic delphinid species are generally more associated with dynamic oceanographic characteristics rather than static physical features, and those species (such as common dolphin) with substantial distribution to the north of the proposed survey area would likely be little affected at the population level by the proposed activity. For example, both species of spotted dolphin and the offshore stock of bottlenose dolphin range widely over slope and abyssal waters (*e.g.,* Waring *et al.,* 2016; Roberts *et al.,* 2016), while the rough-toothed dolphin does not appear bound by water depth in its range (Ritter, 2002; Wells *et al.,* 2008). Our proposed mitigation largely eliminates potential effects to depleted coastal stocks of bottlenose dolphin, and provides substantial benefit to the on-shelf portion of the Atlantic spotted dolphin population. We also expect that meaningful subsidiary benefit will accrue to certain species from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales, most notably to species presumed to have greater association with shelf break waters north of Cape Hatteras (*e.g.,* offshore bottlenose dolphins, common dolphins, and Risso's dolphins). In consideration of these factors—overall impact ratings and proposed mitigation—we preliminarily find that the total marine mammal take from Western's proposed survey activities will have a negligible impact on remaining delphinid species (*i.e.,* all stocks of bottlenose dolphin, two species of spotted dolphin, rough-toothed dolphin, striped dolphin, common dolphin, and Risso's dolphin).

For those species with de minimis impact ratings we believe that, absent additional relevant concerns related to population status or context, the rating implies that a negligible impact should be expected as a result of the specified activity. No such concerns exist for these species, and we preliminarily find that the total marine mammal take from Western's proposed survey activities

will have a negligible impact on the humpback whale, minke whale, Clymene dolphin, and harbor porpoise.

In summary, 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, we preliminarily find that the total marine mammal take from Western's proposed survey activities will have a negligible impact on all affected marine mammal species or stocks.

CGG—CGG proposes an approximately 155-day survey program, or 42 percent of the year (approximately two seasons). However, the proposed survey would cover a large spatial extent (*i.e.,* a majority of the mid- and south Atlantic; see Figure 3 of CGG's application). Therefore, although the survey would be long-term (*i.e.,* greater than one season) in total duration, we would not expect the duration of effect to be greater than moderate and intermittent in any given area. Table 18 displays relevant information leading to impact ratings for each species resulting from CGG's proposed survey. In general, we note that although the temporal and spatial scale of the proposed survey activity is large, the fact that this mobile acoustic source would be moving across large areas (as compared with geophysical surveys with different objectives that may require focused effort over long periods of time in smaller areas) means that many individuals may receive limited exposure to survey noise. The nature of such potentially transitory exposure means that the potential significance of behavioral disruption and potential for longer-term avoidance of important areas is limited.

TABLE 18—MAGNITUDE AND IMPACT RATINGS, CGG

Species	Amount	Spatial extent	Magnitude rating	Consequences	Impact rating
North Atlantic right whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Humpback whale	De minimis	Low-Moderate	De minimis	n/a	De minimis.
Minke whale	De minimis	Low-High	De minimis	n/a	De minimis.
Fin whale	De minimis	Low	De minimis	n/a	De minimis.
Sperm whale	High	Moderate	High	Medium	High.
Kogia spp	Low	High	High	Low	Moderate.
Beaked whales	High	Moderate	High	High	High.
Rough-toothed dolphin	High	High	High	Low	Moderate.
Common bottlenose dolphin	Low	High	High	Low	Moderate.
Clymene dolphin	High	High	High	Low	Moderate.
Atlantic spotted dolphin	Low	Moderate	Medium	Low	Low.
Pantropical spotted dolphin	High	High	High	Low	Moderate.
Striped dolphin	Low	Low	Medium	Low	Low.
Short-beaked common dolphin	De minimis	Low-moderate	De minimis	n/a	De minimis.
Risso's dolphin	Low	Low-moderate	Medium	Low	Low.
Pilot whales	Low	Moderate	Medium	Medium	Moderate.
Harbor porpoise	De minimis	Low	De minimis	n/a	De minimis.

The North Atlantic right whale is endangered, has a very low population size, and faces significant additional stressors. Therefore, regardless of impact rating, we believe that the proposed mitigation described previously is important in order for us to make the necessary finding and, in consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from CGG's proposed survey activities will have a negligible impact on the North Atlantic right whale.

Magnitude ratings for the sperm whale and beaked whales are high and, further, consequence factors reinforce high impact ratings for both. Magnitude rating for pilot whales is medium but, similar to beaked whales, we expect that compensatory ability will be low due to presumed residency in areas targeted by the proposed survey—leading to a moderate impact rating. However, regardless of impact rating, the consideration of likely consequences and contextual factors leads us to conclude that targeted mitigation is important to support a finding that the effects of the proposed survey will have a negligible impact on these species. As described previously, sperm whales are an endangered species with particular susceptibility to disruption of foraging behavior, beaked whales are particularly acoustically sensitive (with presumed low compensatory ability), and pilot whales are sensitive to additional stressors due to a high degree of mortality in commercial fisheries (and also with low compensatory ability). Finally, due to their acoustic sensitivity, we have proposed shutdown of the acoustic source upon observation of a beaked whale at any distance from the source vessel. In consideration of the proposed mitigation, we preliminarily find that the total marine mammal take from CGG's proposed survey activities will have a negligible impact on the sperm whale, beaked whales (*i.e., Ziphius cavirostris* and *Mesoplodon* spp.), and pilot whales (*i.e., Globicephala* spp.).

Kogia spp. receive a moderate impact rating. However, although NMFS does not currently identify a trend for these populations, recent survey effort and stranding data show a simultaneous increase in at-sea abundance and strandings, suggesting growing *Kogia* spp. abundance (NMFS, 2011; 2013a; Waring *et al.,* 2007; 2013). Finally, we expect that *Kogia* spp. will receive subsidiary benefit from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales and, although minimally effective due to the difficulty of at-sea observation of *Kogia* spp., we have proposed shutdown of the acoustic source upon observation of *Kogia* spp. at any distance from the source vessel. In consideration of these factors—likely population increase and proposed mitigation—we preliminarily find that the total marine mammal take from CGG's proposed survey activities will have a negligible impact on *Kogia* spp.

Despite medium to high magnitude ratings (with the exception of the short-beaked common dolphin), remaining delphinid species receive low to moderate impact ratings due to a lack of propensity for behavioral disruption due to geophysical survey activity and our expectation that these species would generally have relatively high compensatory ability. In addition, these species do not have significant issues

relating to population status or context. Many oceanic delphinid species are generally more associated with dynamic oceanographic characteristics rather than static physical features, and those species (such as common dolphin) with substantial distribution to the north of the proposed survey area would likely be little affected at the population level by the proposed activity. For example, both species of spotted dolphin and the offshore stock of bottlenose dolphin range widely over slope and abyssal waters (*e.g.,* Waring *et al.,* 2016; Roberts *et al.,* 2016), while the rough-toothed dolphin does not appear bound by water depth in its range (Ritter, 2002; Wells *et al.,* 2008). Our proposed mitigation largely eliminates potential effects to depleted coastal stocks of bottlenose dolphin. We also expect that meaningful subsidiary benefit will accrue to certain species from the proposed mitigation targeted for sperm whales, beaked whales, and pilot whales, most notably to species presumed to have greater association with shelf break waters north of Cape Hatteras (*e.g.,* offshore bottlenose dolphins, common dolphins, and Risso's dolphins). In consideration of these factors—overall impact ratings and proposed mitigation—we preliminarily find that the total marine mammal take from CGG's proposed survey activities will have a negligible impact on remaining delphinid species (*i.e.,* all stocks of bottlenose dolphin, two species of spotted dolphin, rough-toothed dolphin, striped dolphin, Clymene dolphin, and Risso's dolphin).

For those species with de minimis impact ratings we believe that, absent additional relevant concerns related to population status or context, the rating implies that a negligible impact should be expected as a result of the specified activity. No such concerns exist for these species, and we preliminarily find that the total marine mammal take from CGG's proposed survey activities will have a negligible impact on the humpback whale, minke whale, fin whale, short-beaked common dolphin, and harbor porpoise.

In summary, 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, we preliminarily find that the total marine mammal take from CGG's proposed survey activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers Analyses

Please see Tables 10 and 11 and the related text for information relating to the basis for our small numbers analyses. Table 10 provides the numbers of predicted exposures above specified received levels, while Table 11 provides numbers of take by Level A and Level B harassment proposed for authorization. The latter is what we consider for purposes of small numbers analysis for each proposed IHA. For the sei whale, Bryde's whale, blue whale, northern bottlenose whale, Fraser's dolphin, melon-headed whale, false killer whale, pygmy killer whale, killer whale, spinner dolphin, and white-sided dolphin, we propose to authorize take resulting from a single exposure of one group of each species or stock, as appropriate (using average group size), for each applicant. We believe that a single incident of take of one group of any of these species represents take of small numbers for that species. Therefore, for each applicant, based on the analyses contained herein of their specified activity, we preliminarily find that small numbers of marine mammals will be taken for each of these 11 affected species or stocks for each specified activity. We do not discuss these 11 species further in the applicant-specific analyses that follow.

As discussed previously, the MMPA does not define small numbers. NMFS compares the estimated numbers of individuals expected to be taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals. In that regard, NMFS proposes to limit its authorization of take to 30 percent of the most appropriate stock abundance estimate, assuming no other relevant factors that provide more context for the estimate, *e.g.,* information that the take numbers represent instances of multiple exposures of the same animals. For these proposed IHAs, the proposed take authorizations (Table 11) have been limited to a threshold of 30 percent. In order to limit actual take to this proportion of estimated stock abundance, we propose to require monthly reporting from those applicants with predicted exposures of any species exceeding this threshold (*i.e.,* Spectrum, TGS, CGG, and Western). These interim reports would include amount and location of line-kms surveyed, all marine mammal observations with closest approach distance, and corrected numbers of marine mammals ''taken.'' Upon reaching the pre-determined take threshold, any issued IHA would be withdrawn. This proposed mechanism to limit actual take is discussed further under ''Proposed Monitoring and Reporting.''

In addition, we have proposed time-area restrictions targeted at certain species (see ''Proposed Mitigation''). In particular, one such proposed restriction is targeted towards on-shelf Atlantic spotted dolphins specifically to reduce the likely number of individuals taken. This measure is proposed for implementation for Spectrum, TGS, and Western, due to the uniformly high number of predicted exposures of Atlantic spotted dolphins across all three applicants. In addition, we have proposed time-area restrictions targeted towards sperm whales, beaked whales, and pilot whales. While these restrictions are primarily intended to provide protections important to our preliminary negligible impact findings for each applicant, they would also be expected to reduce the total number of individuals taken (of the three target species/guilds as well as other species likely to be present in those areas). While we are unable to quantify the likely reduction in individuals taken as a result of the proposed mitigation, we believe that the combination of the proposed mitigation and the controls on taking through proposed monitoring and reporting requirements will be effective in limiting the taking of individuals of any species to small numbers. Applicant-specific analyses follow.

Spectrum—The total amount of taking proposed for authorization for a majority of affected stocks ranges from 1 to 24 percent of the most appropriate population abundance estimate. The total amount of taking proposed for authorization for remaining stocks (*i.e.,* rough-toothed dolphin, bottlenose dolphin, Clymene dolphin, Atlantic spotted dolphin, and pantropical spotted dolphin) is limited to 30 percent of the most appropriate population abundance estimate, through mitigation and monitoring mechanisms described previously.

Based on the analysis contained herein of Spectrum's specified activity, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that small numbers of marine mammals will be taken relative to each of the affected species or stocks.

TGS—The total amount of taking proposed for authorization for the harbor porpoise, North Atlantic right whale, humpback whale, minke whale, and Clymene dolphin ranges from one to nine percent of the most appropriate population abundance estimate. The total amount of taking proposed for

authorization for all remaining stocks is limited to 30 percent of the most appropriate population abundance estimate, through mitigation and monitoring mechanisms described previously.

Based on the analysis contained herein of TGS's specified activity, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that small numbers of marine mammals will be taken relative to each of the affected species or stocks.

ION—The total amount of taking proposed for authorization for all affected stocks ranges from less than one to four percent of the most appropriate population abundance estimate. Therefore, based on the analysis contained herein of ION's specified activity, we preliminarily find that small numbers of marine mammals will be taken relative to each of the affected species or stocks.

Western—The total amount of taking proposed for authorization for a majority of affected stocks ranges from less than 1 to 25 percent of the most appropriate population abundance estimate. The total amount of taking proposed for authorization for remaining stocks (*i.e.,* sperm whale, beaked whales, and Atlantic spotted dolphin) is limited to 30 percent of the most appropriate population abundance estimate, through mitigation and monitoring mechanisms described previously.

Based on the analysis contained herein of Western's specified activity, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that small numbers of marine mammals will be taken relative to each of the affected species or stocks.

CGG—The total amount of taking proposed for authorization for a majority of affected stocks ranges from less than 1 to 26 percent of the most appropriate population abundance estimate. The total amount of taking proposed for authorization for remaining stocks (*i.e.,* rough-toothed dolphin, Clymene dolphin, and pantropical spotted dolphin) is limited to 30 percent of the most appropriate population abundance estimate, through mitigation and monitoring mechanisms described previously.

Based on the analysis contained herein of CGG's specified activity, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that small numbers of marine mammals will be taken relative to each of the affected species or stocks.

Proposed Monitoring and Reporting

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

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

Proposed monitoring requirements are the same for all applicants (except as noted), and a single discussion is provided here.

PSO Eligibility and Qualifications

All PSO resumes must be submitted to NMFS and PSOs must be approved by NMFS after a review of their qualifications. PSOs should provide a current resume and information related to PSO training, if available. The latter should include (1) a course information packet that includes the name and qualifications (*e.g.,* experience, training, or education) of the instructor(s), the course outline or syllabus, and course reference material; and (2) a document stating successful completion of the course. PSOs must be trained biologists, with the following minimum qualifications:

- A bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics;
- Experience and ability to conduct field observations and collect data according to assigned protocols (may include academic experience; required for visual PSOs only) and experience with data entry on computers;
- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target (required for visual PSOs only);
- Experience or training in the field identification of marine mammals, including the identification of behaviors (required for visual PSOs only);
- Sufficient training, orientation, or experience with the survey operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; marine mammal behavior; and descriptions of activity conducted and implementation of mitigation;
- Ability to communicate orally, by radio or in person, with survey personnel to provide real-time information on marine mammals observed in the area as necessary; and
- Successful completion of relevant training (described below), including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification, and prospective PSOs granted waivers must satisfy training requirements described below. Alternate experience that may be considered includes, but is not limited to, the following:

- Secondary education and/or experience comparable to PSO duties.
- Previous work experience conducting academic, commercial, or

government-sponsored marine mammal surveys.

• Previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

Training—NMFS does not currently approve specific training programs; however, acceptable training may include training previously approved by BSEE, or training that adheres generally to the recommendations provided by Baker *et al.* (2013). Those recommendations include the following topics for training programs:

• Life at sea, duties, and authorities;

• Ethics, conflicts of interest, standards of conduct, and data confidentiality;

• Offshore survival and safety training;

• Overview of oil and gas activities (including geophysical data acquisition operations, theory, and principles) and types of relevant sound source technology and equipment;

• Overview of the MMPA and ESA as they relate to protection of marine mammals;

• Mitigation, monitoring, and reporting requirements as they pertain to geophysical surveys;

• Marine mammal identification, biology and behavior;

• Background on underwater sound;

• Visual surveying protocols, distance calculations and determination, cues, and search methods for locating and tracking different marine mammal species (visual PSOs only);

• Optimized deployment and configuration of PAM equipment to ensure effective detections of cetaceans for mitigation purposes (PAM operators only);

• Detection and identification of vocalizing species or cetacean groups (PAM operators only);

• Measuring distance and bearing of vocalizing cetaceans while accounting for vessel movement (PAM operators only);

• Data recording and protocols, including standard forms and reports, determining range, distance, direction, and bearing of marine mammals and vessels; recording GPS location coordinates, weather conditions, Beaufort wind force and sea state, etc.;

• Proficiency with relevant software tools;

• Field communication/support with appropriate personnel, and using communication devices (*e.g.,* two-way radios, satellite phones, Internet, email, facsimile);

• Reporting of violations, noncompliance, and coercion; and

• Conflict resolution.

PAM operators should regularly refresh their detection skills through practice with simulation-modelling software, and should keep up to date with training on the latest software/hardware advances.

Visual Monitoring

The lead PSO is responsible for establishing and maintaining clear lines of communication with vessel crew. The vessel operator shall work with the lead PSO to accomplish this and shall ensure any necessary briefings are provided for vessel crew to understand mitigation requirements and protocols. While on duty, PSOs would continually scan the water surface in all directions around the acoustic source and vessel for presence of marine mammals, using a combination of the naked eye and high-quality binoculars, from optimum vantage points for unimpaired visual observations with minimum distractions. PSOs would collect observational data for all marine mammals observed, regardless of distance from the vessel, including species, group size, presence of calves, distance from vessel and direction of travel, and any observed behavior (including an assessment of behavioral responses to survey activity). Upon observation of marine mammal(s), a PSO would record the observation and monitor the animal's position (including latitude/longitude of the vessel and relative bearing and estimated distance to the animal) until the animal dives or moves out of visual range of the observer, and a PSO would continue to observe the area to watch for the animal to resurface or for additional animals that may surface in the area. PSOs would also record environmental conditions at the beginning and end of the observation period and at the time of any observations, as well as whenever conditions change significantly in the judgment of the PSO on duty.

The vessel operator must provide bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These should be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel. The operator must also provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, at the discretion of the PSOs. NVDs may include night vision binoculars or monocular or forward-looking infrared device (*e.g.,* Exelis PVS–7 night vision goggles; Night Optics D–300 night vision monocular; FLIR M324XP thermal imaging camera or equivalents). At minimum, the device should feature automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations. Other required equipment, which should be made available to PSOs by the third-party observer provider, includes reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (*i.e.,* Fujinon or equivalent), GPS, digital single-lens reflex camera of appropriate quality (*i.e.,* Canon or equivalent), compass, and any other tools necessary to adequately perform the tasks described above, including accurate determination of distance and bearing to observed marine mammals.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the applicant.

Acoustic Monitoring

Monitoring of a towed PAM system is required at all times, from 30 minutes prior to ramp-up and throughout all use of the acoustic source. Towed PAM systems generally consist of hardware (*e.g.,* hydrophone array, cables) and software (*e.g.,* data processing and monitoring system). While not required, we recommend use of industry standard software (*e.g.,* PAMguard, which is open source). Hydrophone signals are processed for output to the PAM operator with software designed to detect marine mammal vocalizations. Current PAM technology has some limitations (*e.g.,* limited directional capabilities and detection range, masking of signals due to noise from the vessel, source, and/or flow, localization) and there are no formal guidelines currently in place regarding specifications for hardware, software, or operator training requirements. However, a working group (led by A.M. Thode) is developing formal standards under the auspices of the Acoustical Society of America's (ASA) Accredited Standards Committee on Animal Bioacoustics (ANSI S3/SC1/WG3; ''Towed Array Passive Acoustic Operations for Bioacoustics Applications''). While no formal standards have yet been completed, a ''roadmap'' was developed during a 2016 workshop held for the express purpose of continuing development of such standards. A workshop report (Thode *et al.,* 2017) provides a highly detailed preview of what the scope and

structure of the standard would be, including operator training, planning, hardware, real-time operations, localization, and performance validation. NMFS will review this document, and recommends that applicants do the same in developing or refining their PAM plans, as appropriate.

Our requirement to use PAM refers to the use of calibrated hydrophone arrays with full system redundancy to detect, identify and estimate distance and bearing to vocalizing cetaceans, to the extent possible. With regard to calibration, the PAM system should have at least one calibrated hydrophone, sufficient for determining whether background noise levels on the towed PAM system are sufficiently low to meet performance expectations. Additionally, if multiple hydrophone types occur in a system (*i.e.,* monitor different bandwidths), then one hydrophone from each such type should be calibrated, and whenever sets of hydrophones (of the same type) are sufficiently spatially separated such that they would be expected to experience ambient noise environments that differ by 6 dB or more across any integrated species cluster bandwidth, then at least one hydrophone from each set should be calibrated. The arrays should incorporate appropriate hydrophone elements (1 Hz to 180 kHz range) and sound data acquisition card technology for sampling relevant frequencies (*i.e.,* to 360 kHz). This hardware should be coupled with appropriate software to aid monitoring and listening by a PAM operator skilled in bioacoustics analysis and computer system specifications capable of running appropriate software. In the absence of a formally defined set of prescriptions addressing any of these three facets of PAM technology, all applicants must provide a description of the hardware and software proposed for use prior to proceeding with any BOEM-permitted survey. Applicant-specific PAM plans are available for review online at: *www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm.* Spectrum and ION submitted separate plans, while TGS and Western included their plans in Section 11 of their respective applications. CGG discusses PAM in Section 13 of their application. As noted above, we recommend that each applicant produce a revised plan prior to a final decision on these requests. As recommended by Thode *et al.* (2017), the revised plans should, at minimum, adequately address and describe (1) the hardware and software planned for use, including a hardware performance diagram demonstrating that the sensitivity and dynamic range of the hardware is appropriate for the operation; (2) deployment methodology, including target depth/tow distance; (3) definitions of expected operational conditions, used to summarize background noise statistics; (4) proposed detection-classification-localization methodology, including anticipated species clusters (using a cluster definition table), target minimum detection range for each cluster, and the proposed localization method for each cluster; (5) operation plans, including the background noise sampling schedule; and (6) cluster-specific details regarding which real-time displays and automated detectors the operator would monitor.

In coordination with vessel crew, the lead PAM operator should be responsible for deployment, retrieval, and testing and optimization of the hydrophone array. While on duty, the PAM operator should diligently listen to received signals and/or monitoring display screens in order to detect vocalizing cetaceans, except as required to attend to PAM equipment. The PAM operator should use appropriate sample analysis and filtering techniques and, as described below, must report all cetacean detections. While not required prior to development of formal standards for PAM use, we recommend that vessel self-noise assessments are undertaken during mobilization in order to optimize PAM array configuration according to the specific noise characteristics of the vessel and equipment involved, and to refine expectations for distance/bearing estimations for cetacean species during the survey. Copies of any vessel self-noise assessment reports should be included with the summary trip report.

Data Collection

PSOs must use standardized data forms, whether hard copy or electronic. PSOs will record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source to resume survey. If required mitigation was not implemented, PSOs should submit a description of the circumstances. We require that, at a minimum, the following information be reported:

- Vessel names (source vessel and other vessels associated with survey) and call signs
- PSO names and affiliations
- Dates of departures and returns to port with port name
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)
- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-ramp-up survey, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.)
- If a marine mammal is sighted, the following information should be recorded:
  - Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform)
  - PSO who sighted the animal
  - Time of sighting
  - Vessel location at time of sighting
  - Water depth
  - Direction of vessel's travel (compass direction)
  - Direction of animal's travel relative to the vessel
  - Pace of the animal
  - Estimated distance to the animal and its heading relative to vessel at initial sighting
  - Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species
  - Estimated number of animals (high/low/best)
  - Estimated number of animals by cohort (adults, yearlings, juveniles,

calves, group composition, etc.)
  - Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics)
  - Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior)
  - Animal's closest point of approach (CPA) and/or closest distance from the center point of the acoustic source;
  - Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other)
  - Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.); time and location of the action should also be recorded
- If a marine mammal is detected while using the PAM system, the following information should be recorded:
  - An acoustic encounter identification number, and whether the detection was linked with a visual sighting
  - Time when first and last heard
  - Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal, etc.)
  - Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), and any other notable information.

Reporting

PSO effort, survey details, and sightings data should be recorded continuously during surveys and reports prepared each day during which survey effort is conducted. As described previously, applicants with predicted exposures of any species exceeding the 30-percent threshold (*i.e.,* Spectrum, TGS, CGG, and Western) must submit regular interim reports. These interim reports would include amount and location of line-kms surveyed, all marine mammal observations with closest approach distance, and corrected numbers of marine mammals ''taken.'' We propose submission of such interim reports to NMFS on a monthly basis.

There are multiple reasons why marine mammals may be present and yet be undetected by observers. Animals are missed because they are underwater (availability bias) or because they are available to be seen, but are missed by observers (perception and detection biases) (*e.g.,* Marsh and Sinclair, 1989). Negative bias on perception or detection of an available animal may result from environmental conditions, limitations inherent to the observation platform, or observer ability. In this case, we do not have prior knowledge of any potential negative bias on detection probability due to observation platform or observer ability. Therefore, observational data corrections must be made with respect to assumed species-specific detection probability as evaluated through consideration of environmental factors (*e.g.,* $f(0)$). We propose that corrections be made using detection probabilities found in Carr *et al.* (2011), which are based on $f(0)$ values from line-transect survey studies described in Koski *et al.* (1998), Barlow (1999), and Thomas *et al.* (2002). Carr *et al.* (2011) derived detection probabilities (shown in Table 19) as follows:

- $1/f(0)$ is the effective strip width.
- The effective strip width was divided by the truncation distance used to calculate $f(0)$.
- This value is detection probability or the average probability that an animal would be seen within the truncation distance from the vessel.
- For cryptic species where only sea states 0 to 2 were used to calculate $f(0)$, detection probability was arbitrarily divided by 3 to account for the higher probability that animals would be missed during the survey whenever sea states were greater than 2.
- Different detection probability values were calculated for groups with 1–16, 17–60 and greater than 60 individuals based on the different $f(0)$ values for those group sizes.
- The mean group size for the species or guild determined the appropriate detection probability that was used for that species or guild.

TABLE 19—DETECTION PROBABILITIES

Common name	Detection probability	Assumed group size
Mysticete whales (except minke whale)	0.259	1–16
Minke whale	0.244	1–16
Sperm whale	0.259	1–16
Kogia spp.	0.055	1–16
Beaked whales	0.244	1–16
Small delphinids, medium group size (all but common, spinner, and Fraser's dolphin)	0.524	17–60
Small delphinids, large group size	0.926	>60
Large delphinids, small group size (all but Risso's dolphin and killer whale)	0.309	1–16
Large delphinids, medium group size	0.524	17–60
Harbor porpoise	0.055	1–16

Adapted from Table B–6, Carr *et al.* (2011).

A draft comprehensive report would be submitted to NMFS within 90 days of the completion of survey effort, and must include all information described above under ''Data Collection.'' The report will describe the operations conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will summarize the dates and locations of survey operations, and all marine mammal sightings (dates, times, locations, activities, associated survey activities); geospatial data regarding locations where the acoustic source was used must be provided as an ESRI shapefile with all necessary files and appropriate metadata. In addition to the report, all raw observational data shall be made available to NMFS. This report must also include a validation document concerning the use of PAM, which should include necessary noise validation diagrams and demonstrate whether background noise levels on the PAM deployment limited achievement of the planned detection goals.

The report will also include estimates of the number of takes based on the observations and in consideration of the detectability of the marine mammal species observed (*e.g.,* in consideration of *f*(0)). Applicants must provide an estimate of the number (by species) of marine mammals that may have been exposed (based on observational data and accounting for animals present but unavailable for sighting (*i.e., f*(0) values)) to the survey activity at received levels greater than or equal to the harassment threshold (*i.e.,* 160 dB rms). The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report. A final report must be submitted within 30 days following resolution of any comments on the draft report.

In the event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as a serious injury or mortality, the applicant shall immediately cease the specified activities and immediately report the take to NMFS. The report must include the following information:

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

The applicant shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the applicant to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The applicant may not resume their activities until notified by NMFS.

In the event that the applicant discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), the applicant will immediately report the incident to NMFS. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with the applicant to determine whether modifications to the activities are appropriate.

In the event that the applicant discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the applicant would report the incident to NMFS within 24 hours of the discovery. The applicant would provide photographs or video footage (if available) or other documentation of the animal to NMFS.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions. Therefore, relevant to the Spectrum, TGS, ION, CGG, and Western proposed IHAs, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are six marine mammal species listed as endangered under the ESA that may occur in the proposed survey areas. Under section 7 of the ESA, BOEM requested initiation of formal consultation (on behalf of itself and BSEE) in 2012 with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division (Interagency Cooperation Division) on the proposed authorization of geological and geophysical survey activities under its oil and gas, renewable energy and marine minerals programs. These activities were described in BOEM's Draft PEIS for Atlantic OCS Proposed Geological and Geophysical Activities in the Mid-Atlantic and South Atlantic Planning Areas. NMFS concluded formal consultation by issuing a final Biological Opinion to BOEM and BSEE on July 19, 2013, determining that the proposed activities were not likely to jeopardize the continued existence of threatened or endangered species nor destroy or adversely modify designated critical habitat under NMFS's jurisdiction. On October 16, 2015, BOEM and BSEE reinitiated consultation with NMFS.

NMFS's Office of Protected Resources, Permits and Conservation Division will also consult internally with Interagency Cooperation Division on the proposed issuance of authorizations under section 101(a)(5)(D) of the MMPA. NMFS will conclude the consultation prior to reaching a determination regarding the proposed issuance of the authorizations.

National Environmental Policy Act

In 2014, the BOEM produced a PEIS to evaluate potential significant environmental effects of G&G activities on the Mid- and South Atlantic OCS, pursuant to requirements of NEPA. These activities include geophysical surveys in support of hydrocarbon exploration, as are proposed in the MMPA applications before NMFS. The PEIS is available at: *www.boem.gov/Atlantic-G-G-PEIS/.* NMFS participated in development of the PEIS as a cooperating agency and believes it appropriate to adopt the analysis in order to assess the impacts to the human environment of issuance of the subject IHAs. Information in the IHA applications, BOEM's PEIS, and this notice collectively provide the environmental information related to proposed issuance of these IHAs for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a final decision of whether to adopt BOEM's PEIS and sign a Record of Decision related to issuance of IHAs, prior to a final decision on the incidental take authorization requests.

Proposed Authorizations

As a result of these preliminary determinations, we propose to issue five separate IHAs to the aforementioned applicant companies for conducting the described geophysical survey activities in the Atlantic Ocean within BOEM's Mid- and South Atlantic OCS planning areas, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Specific language from the proposed IHAs is provided next.

This section contains drafts of the IHAs. The wording contained in this section is proposed for inclusion in the IHAs (if issued).

Spectrum

1. This incidental harassment authorization (IHA) is valid for a period of one year from the date of issuance.

2. This IHA is valid only for marine geophysical survey activity, as specified in Spectrum's IHA application and using an array with characteristics specified in the application, in the Atlantic Ocean within BOEM's Mid- and South Atlantic OCS planning areas.

3. General Conditions

(a) A copy of this IHA must be in the possession of Spectrum, the vessel operator and other relevant personnel, the lead protected species observer (PSO), and any other relevant designees of Spectrum operating under the authority of this IHA.

(b) The species authorized for taking are listed in Table 11. The taking, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 11.

(c) The taking by serious injury or death of any of the species listed in Table 11 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 11 is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) Spectrum shall ensure that the vessel operator and other relevant vessel personnel are briefed on all responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. Spectrum shall instruct relevant vessel personnel with regard to the authority of the protected species monitoring team, and shall ensure that relevant vessel personnel and protected species monitoring team participate in a joint onboard briefing led by the vessel operator and lead PSO to ensure that responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements are clearly understood. This briefing must be repeated when relevant new personnel join the survey operations.

(e) During use of the acoustic source, if the source vessel encounters any marine mammal species that are not listed in Table 11, then the acoustic source must be shut down to avoid unauthorized take.

4. Mitigation Requirements

The holder of this Authorization is required to implement the following mitigation measures:

(a) Spectrum must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, may have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course. NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.

(b) At least two PSOs must have a minimum of 90 days at-sea experience working as PSOs during a deep penetration seismic survey, with no more than eighteen months elapsed since the conclusion of the at-sea experience. At least one of these must have relevant experience as a visual PSO and at least one must have relevant experience as an acoustic PSO. One ''experienced'' visual PSO shall be designated as the lead for the entire protected species observation team. The lead shall coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. The lead PSO shall devise the duty schedule such that ''experienced'' PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience to the maximum extent practicable.

(c) Visual Observation

(i) During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur; whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array.

(ii) Visual monitoring must begin not less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset.

(iii) Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

(iv) Visual PSOs shall communicate all observations to acoustic PSOs, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(v) Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(vi) Any observations of marine mammals by crew members aboard any vessel associated with the survey, including chase vessels, shall be relayed to the source vessel and to the PSO team.

(vii) During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

(d) Acoustic Observation

(i) The source vessel must use a towed passive acoustic monitoring (PAM) system, which must be monitored beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source.

(ii) Acoustic PSOs shall communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(iii) Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(iv) Survey activity may continue for brief periods of time when the PAM system malfunctions or is damaged. Activity may continue for 30 minutes without PAM while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring under the following conditions:

(A) Daylight hours and sea state is less than or equal to BSS 4;

(B) No marine mammals (excluding small delphinoids) detected solely by PAM in the exclusion zone in the previous two hours;

(C) NMFS is notified via email as soon as practicable with the time and location in which operations began without an active PAM system; and

(D) Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

(e) Buffer Zone and Exclusion Zone—The PSOs shall establish and monitor a 500-m exclusion zone and a 1,000-m buffer zone. These zones shall be based upon radial distance from any element

of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. PSOs must monitor the buffer zone for a minimum of 30 minutes prior to ramp-up (*i.e.,* pre-clearance).

(f) Ramp-up—A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. Ramp-up may not be initiated if any marine mammal is within the designated buffer zone. If a marine mammal is observed within the buffer zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the buffer zone or until an additional time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species). PSOs would monitor the buffer zone during ramp-up, and ramp-up must cease and the source shut down upon observation of marine mammals within or approaching the buffer zone. Ramp-up may occur at times of poor visibility if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances. The operator must notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Total duration should be approximately 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed. Ramp-ups shall be scheduled so as to minimize the time spent with source activated prior to reaching the designated run-in.

(g) Shutdown Requirements

(i) Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source (visual PSOs on duty should be in agreement on the need for delay or shutdown before requiring such action). When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections must be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs and initiation of dialogue as necessary. When there is certainty regarding the need for mitigation action on the basis of either visual or acoustic detection alone, the relevant PSO(s) must call for such action immediately. When only the acoustic PSO is on duty and a detection is made, if there is uncertainty regarding species identification or distance to the vocalizing animal(s), the acoustic source must be shut down as a precaution.

(ii) Upon completion of ramp-up, if a marine mammal appears within, enters, or appears on a course to enter the exclusion zone, the acoustic source must be shut down (*i.e.,* power to the acoustic source must be immediately turned off). If a marine mammal is detected acoustically, the acoustic source must be shut down, unless the acoustic PSO is confident that the animal detected is outside the exclusion zone or that the detected species is not subject to the shutdown requirement.

(A) This shutdown requirement is waived for dolphins of the following genera: *Steno, Tursiops, Stenella, Delphinus, Lagenodelphis,* and *Lagenorhynchus.* The shutdown waiver only applies if the animals are traveling, including approaching the vessel. If animals are stationary and the source vessel approaches the animals, the shutdown requirement applies. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, shutdown must be implemented.

(iii) Shutdown of the acoustic source is required upon observation of a right whale at any distance.

(iv) Shutdown of the acoustic source is required upon observation of a whale (*i.e.,* sperm whale or any baleen whale) with calf at any distance, with ''calf'' defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult.

(v) Shutdown of the acoustic source is required upon observation of a diving sperm whale at any distance centered on the forward track of the source vessel.

(vi) Shutdown of the acoustic source is required upon observation (visual or acoustic) of a beaked whale or *Kogia* spp. at any distance.

(vii) Shutdown of the acoustic source is required upon observation of an aggregation (*i.e.,* six or more animals) of marine mammals of any species that does not appear to be traveling.

(viii) Upon implementation of shutdown, the source may be reactivated after the animal(s) has been observed exiting the exclusion zone or following a 30-minute clearance period with no further observation of the animal(s). Where there is no relevant zone (*e.g.,* shutdown due to observation of a right whale), a 30-minute clearance period must be observed following the last observation of the animal(s).

(ix) If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 minutes), it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the exclusion zone and no acoustic detections have occurred. For any longer shutdown, pre-clearance watch and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required but if the shutdown period was brief and constant observation maintained, pre-clearance watch is not required.

(h) Miscellaneous Protocols

(i) The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided. Notified operational capacity (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be noticed to the PSO(s) on duty and fully documented. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

(ii) Testing of the acoustic source involving all elements requires normal mitigation protocols (*e.g.,* ramp-up).

Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance.

(i) Closure Areas

(i) No use of the acoustic source may occur within 30 km of the coast.

(ii) From November 1 through April 30, no use of the acoustic source may occur within an area bounded by the greater of three distinct components at any location: (1) A 47-km wide coastal strip throughout the entire Mid- and South Atlantic OCS planning areas; (2) Unit 2 of designated critical habitat for the North Atlantic right whale, buffered by 10 km; and (3) the designated southeastern seasonal management area (SMA) for the North Atlantic right whale, buffered by 10 km. North Atlantic right whale dynamic management areas (DMA; buffered by 10 km) are also closed to use of the acoustic source when in effect. It is the responsibility of the survey operators to monitor appropriate media and to be aware of designated DMAs.

(iii) No use of the acoustic source may occur within the areas designated by coordinates in Table 3 during applicable time periods. Area #1 is in effect from June 1 through August 31. Areas #2–4 are in effect year-round. Area #5 is in effect from July 1 through September 30.

(j) Vessel Strike Avoidance

(i) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down or stop their vessel or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale, or other marine mammal (*i.e.,* non-whale cetacean or pinniped). In this context, ''other whales'' includes sperm whales and all baleen whales other than right whales.

(ii) All vessels, regardless of size, must observe the 10 kn speed restriction in DMAs, the Mid-Atlantic SMA (from November 1 through April 30), and critical habitat and the Southeast SMA (from November 15 through April 15).

(iii) Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

(iv) All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. The following avoidance measures must be taken if a right whale is within 500 m of any vessel:

(A) While underway, the vessel operator must steer a course away from the whale at 10 kn or less until the minimum separation distance has been established.

(B) If a whale is spotted in the path of a vessel or within 100 m of a vessel underway, the operator shall reduce speed and shift engines to neutral. The operator shall re-engage engines only after the whale has moved out of the path of the vessel and is more than 100 m away. If the whale is still within 500 m of the vessel, the vessel must select a course away from the whale's course at a speed of 10 kn or less. This procedure must also be followed if a whale is spotted while a vessel is stationary. Whenever possible, a vessel should remain parallel to the whale's course while maintaining the 500-m distance as it travels, avoiding abrupt changes in direction until the whale is no longer in the area.

(v) All vessels must maintain a minimum separation distance of 100 m from other whales. The following avoidance measures must be taken if a whale other than a right whale is within 100 m of any vessel:

(A) The vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established.

(B) If a vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m.

(vi) All vessels must maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel. If an animal is encountered during transit, a vessel shall attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course.

(k) All vessels associated with survey activity (*e.g.,* source vessels, chase vessels, supply vessels) must have a functioning Automatic Identification System (AIS) onboard and operating at all times, regardless of whether AIS would otherwise be required. Vessel names and call signs must be provided to NMFS, and applicants must notify NMFS when survey vessels are operating.

5. Monitoring Requirements

The holder of this Authorization is required to conduct marine mammal monitoring during survey activity. Monitoring shall be conducted in accordance with the following requirements:

(a) The operator must provide bigeye binoculars (*e.g.,* 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel. The operator must also provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, at the discretion of the PSOs. At minimum, the device should feature automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations.

(b) PSOs must also be equipped with reticle binoculars (*e.g.,* 7 × 50) of appropriate quality (*i.e.,* Fujinon or equivalent), GPS, digital single-lens reflex camera of appropriate quality (*i.e.,* Canon or equivalent), compass, and any other tools necessary to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

(c) PSO Qualifications

(i) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

(ii) PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

(d) Data Collection—PSOs must use standardized data forms, whether hard copy or electronic. PSOs shall record

detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source to resume survey. If required mitigation was not implemented, PSOs should submit a description of the circumstances. We require that, at a minimum, the following information be reported:

(i) Vessel names (source vessel and other vessels associated with survey) and call signs

(ii) PSO names and affiliations

(iii) Dates of departures and returns to port with port name

(iv) Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort

(v) Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts

(vi) Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change

(vii) Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon

(viii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)

(ix) Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-ramp-up survey, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.)

(x) If a marine mammal is sighted, the following information should be recorded:

(A) Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform)

(B) PSO who sighted the animal

(C) Time of sighting

(D) Vessel location at time of sighting

(E) Water depth

(F) Direction of vessel's travel (compass direction)

(G) Direction of animal's travel relative to the vessel

(H) Pace of the animal

(I) Estimated distance to the animal and its heading relative to vessel at initial sighting

(J) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species

(K) Estimated number of animals (high/low/best)

(L) Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.)

(M) Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics)

(N) Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior)

(O) Animal's closest point of approach (CPA) and/or closest distance from the center point of the acoustic source;

(P) Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other)

(Q) Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.); time and location of the action should also be recorded

(xi) If a marine mammal is detected while using the PAM system, the following information should be recorded:

(A) An acoustic encounter identification number, and whether the detection was linked with a visual sighting

(B) Time when first and last heard

(C) Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal, etc.)

(D) Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), and any other notable information.

6. Reporting

(a) Spectrum shall submit monthly interim reports detailing the amount and location of line-kms surveyed, all marine mammal observations with closest approach distance, and corrected numbers of marine mammals ''taken,'' using correction factors given in Table 19.

(b) Spectrum shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). Geospatial data regarding locations where the acoustic source was used must be provided as an ESRI shapefile with all necessary files and appropriate metadata. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as required under condition 5(d) of this IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly to NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

(c) Reporting injured or dead marine mammals:

(i) In the event that the specified activity clearly causes the take of a marine mammal in a manner not prohibited by this IHA (if issued), such as serious injury or mortality, Spectrum shall immediately cease the specified activities and immediately report the incident to NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Name and type of vessel involved;

(C) Vessel's speed during and leading up to the incident;

(D) Description of the incident;

(E) Status of all sound source use in the 24 hours preceding the incident;

(F) Water depth;

(G) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) Description of all marine mammal observations in the 24 hours preceding the incident;

(I) Species identification or description of the animal(s) involved;

(J) Fate of the animal(s); and

(K) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take.

NMFS will work with Spectrum to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Spectrum may not resume their activities until notified by NMFS.

(ii) In the event that Spectrum discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Spectrum shall immediately report the incident to NMFS. The report must include the same information identified in condition 6(c)(1) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Spectrum to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that Spectrum discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Spectrum shall report the incident to NMFS within 24 hours of the discovery. Spectrum shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals. TGS

1. This incidental harassment authorization (IHA) is valid for a period of one year from the date of issuance.

2. This IHA is valid only for marine geophysical survey activity, as specified in TGS's IHA application and using an array with characteristics specified in the application, in the Atlantic Ocean within BOEM's Mid- and South Atlantic OCS planning areas.

3. General Conditions

(a) A copy of this IHA must be in the possession of TGS, the vessel operator and other relevant personnel, the lead protected species observer (PSO), and any other relevant designees of TGS operating under the authority of this IHA.

(b) The species authorized for taking are listed in Table 11. The taking, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 11.

(c) The taking by serious injury or death of any of the species listed in Table 11 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 11 is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) TGS shall ensure that the vessel operator and other relevant vessel personnel are briefed on all responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. TGS shall instruct relevant vessel personnel with regard to the authority of the protected species monitoring team, and shall ensure that relevant vessel personnel and protected species monitoring team participate in a joint onboard briefing led by the vessel operator and lead PSO to ensure that responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements are clearly understood. This briefing must be repeated when relevant new personnel join the survey operations.

(e) During use of the acoustic source, if the source vessel encounters any marine mammal species that are not listed in Table 11, then the acoustic source must be shut down to avoid unauthorized take.

4. Mitigation Requirements

The holder of this Authorization is required to implement the following mitigation measures:

(a) TGS must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, may have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course. NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.

(b) At least two PSOs must have a minimum of 90 days at-sea experience working as PSOs during a deep penetration seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. At least one of these must have relevant experience as a visual PSO and at least one must have relevant experience as an acoustic PSO. One ''experienced'' visual PSO shall be designated as the lead for the entire protected species observation team. The lead shall coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. The lead PSO shall devise the duty schedule such that ''experienced'' PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience to the maximum extent practicable.

(c) Visual Observation

(i) During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur; whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array.

(ii) Visual monitoring must begin not less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset.

(iii) Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

(iv) Visual PSOs shall communicate all observations to acoustic PSOs, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(v) Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(vi) Any observations of marine mammals by crew members aboard any vessel associated with the survey, including chase vessels, shall be relayed to the source vessel and to the PSO team.

(vii) During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct

observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

(d) Acoustic Observation

(i) The source vessel must use a towed passive acoustic monitoring (PAM) system, which must be monitored beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source.

(ii) Acoustic PSOs shall communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(iii) Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(iv) Survey activity may continue for brief periods of time when the PAM system malfunctions or is damaged. Activity may continue for 30 minutes without PAM while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring under the following conditions:

(A) Daylight hours and sea state is less than or equal to BSS 4;

(B) No marine mammals (excluding small delphinoids) detected solely by PAM in the exclusion zone in the previous two hours;

(C) NMFS is notified via email as soon as practicable with the time and location in which operations began without an active PAM system; and

(D) Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

(e) Buffer Zone and Exclusion Zone—The PSOs shall establish and monitor a 500-m exclusion zone and a 1,000-m buffer zone. These zones shall be based upon radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. PSOs must monitor the buffer zone for a minimum of 30 minutes prior to ramp-up (*i.e.,* pre-clearance).

(f) Ramp-up—A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. Ramp-up may not be initiated if any marine mammal is within the designated buffer zone. If a marine mammal is observed within the buffer zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the buffer zone or until an additional time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species). PSOs would monitor the buffer zone during ramp-up, and ramp-up must cease and the source shut down upon observation of marine mammals within or approaching the buffer zone. Ramp-up may occur at times of poor visibility if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances. The operator must notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Total duration should be approximately 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed. Ramp-ups shall be scheduled so as to minimize the time spent with source activated prior to reaching the designated run-in.

(g) Shutdown Requirements

(i) Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source (visual PSOs on duty should be in agreement on the need for delay or shutdown before requiring such action). When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections must be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs and initiation of dialogue as necessary. When there is certainty regarding the need for mitigation action on the basis of either visual or acoustic detection alone, the relevant PSO(s) must call for such action immediately. When only the acoustic PSO is on duty and a detection is made, if there is uncertainty regarding species identification or distance to the vocalizing animal(s), the acoustic source must be shut down as a precaution.

(ii) Upon completion of ramp-up, if a marine mammal appears within, enters, or appears on a course to enter the exclusion zone, the acoustic source must be shut down (*i.e.,* power to the acoustic source must be immediately turned off). If a marine mammal is detected acoustically, the acoustic source must be shut down, unless the acoustic PSO is confident that the animal detected is outside the exclusion zone or that the detected species is not subject to the shutdown requirement.

(A) This shutdown requirement is waived for dolphins of the following genera: *Steno, Tursiops, Stenella, Delphinus, Lagenodelphis,* and *Lagenorhynchus.* The shutdown waiver only applies if the animals are traveling, including approaching the vessel. If animals are stationary and the source vessel approaches the animals, the shutdown requirement applies. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, shutdown must be implemented.

(iii) Shutdown of the acoustic source is required upon observation of a right whale or fin whale at any distance.

(iv) Shutdown of the acoustic source is required upon observation of a whale (*i.e.,* sperm whale or any baleen whale) with calf at any distance, with ''calf'' defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult.

(v) Shutdown of the acoustic source is required upon observation of a diving sperm whale at any distance centered on the forward track of the source vessel.

(vi) Shutdown of the acoustic source is required upon observation (visual or acoustic) of a beaked whale or *Kogia* spp. at any distance.

(vii) Shutdown of the acoustic source is required upon observation of an aggregation (*i.e.,* six or more animals) of marine mammals of any species that does not appear to be traveling.

(viii) Upon implementation of shutdown, the source may be reactivated after the animal(s) has been observed exiting the exclusion zone or following a 30-minute clearance period with no further observation of the animal(s). Where there is no relevant zone (*e.g.,* shutdown due to observation of a right whale), a 30-minute clearance period must be observed following the last observation of the animal(s).

(ix) If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 minutes), it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the exclusion zone and no acoustic detections have occurred. For any longer shutdown, pre-clearance watch and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required but if the shutdown period was brief and constant observation maintained, pre-clearance watch is not required.

(h) Miscellaneous Protocols

(i) The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided. Notified operational capacity (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be noticed to the PSO(s) on duty and fully documented. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

(ii) Testing of the acoustic source involving all elements requires normal mitigation protocols (*e.g.,* ramp-up). Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance.

(i) Closure Areas

(i) No use of the acoustic source may occur within 30 km of the coast.

(ii) From November 1 through April 30, no use of the acoustic source may occur within an area bounded by the greater of three distinct components at any location: (1) A 47-km wide coastal strip throughout the entire Mid- and South Atlantic OCS planning areas; (2) Unit 2 of designated critical habitat for the North Atlantic right whale, buffered by 10 km; and (3) the designated southeastern seasonal management area (SMA) for the North Atlantic right whale, buffered by 10 km. North Atlantic right whale dynamic management areas (DMA; buffered by 10 km) are also closed to use of the acoustic source when in effect. It is the responsibility of the survey operators to monitor appropriate media and to be aware of designated DMAs.

(iii) No use of the acoustic source may occur within the areas designated by coordinates in Table 3 during applicable time periods. Area #1 is in effect from June 1 through August 31. Areas #2–4 are in effect year-round. Area #5 is in effect from July 1 through September 30.

(j) Vessel Strike Avoidance

(i) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down or stop their vessel or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale, or other marine mammal (*i.e.,* non-whale cetacean or pinniped). In this context, ''other whales'' includes sperm whales and all baleen whales other than right whales.

(ii) All vessels, regardless of size, must observe the 10 kn speed restriction in DMAs, the Mid-Atlantic SMA (from November 1 through April 30), and critical habitat and the Southeast SMA (from November 15 through April 15).

(iii) Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

(iv) All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. The following avoidance measures must be taken if a right whale is within 500 m of any vessel:

(A) While underway, the vessel operator must steer a course away from the whale at 10 kn or less until the minimum separation distance has been established.

(B) If a whale is spotted in the path of a vessel or within 100 m of a vessel underway, the operator shall reduce speed and shift engines to neutral. The operator shall re-engage engines only after the whale has moved out of the path of the vessel and is more than 100 m away. If the whale is still within 500 m of the vessel, the vessel must select a course away from the whale's course at a speed of 10 kn or less. This procedure must also be followed if a whale is spotted while a vessel is stationary. Whenever possible, a vessel should remain parallel to the whale's course while maintaining the 500-m distance as it travels, avoiding abrupt changes in direction until the whale is no longer in the area.

(v) All vessels must maintain a minimum separation distance of 100 m from other whales. The following avoidance measures must be taken if a whale other than a right whale is within 100 m of any vessel:

(A) The vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established.

(B) If a vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m.

(vi) All vessels must maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel. If an animal is encountered during transit, a vessel shall attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course.

(k) All vessels associated with survey activity (*e.g.,* source vessels, chase vessels, supply vessels) must have a functioning Automatic Identification System (AIS) onboard and operating at all times, regardless of whether AIS would otherwise be required. Vessel names and call signs must be provided to NMFS, and applicants must notify NMFS when survey vessels are operating.

5. Monitoring Requirements

The holder of this Authorization is required to conduct marine mammal monitoring during survey activity. Monitoring shall be conducted in accordance with the following requirements:

(a) The operator must provide bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on

the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel. The operator must also provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, at the discretion of the PSOs. At minimum, the device should feature automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations.

(b) PSOs must also be equipped with reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (*i.e.,* Fujinon or equivalent), GPS, digital single-lens reflex camera of appropriate quality (*i.e.,* Canon or equivalent), compass, and any other tools necessary to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

(c) PSO Qualifications

(i) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

(ii) PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

(d) Data Collection—PSOs must use standardized data forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source to resume survey. If required mitigation was not implemented, PSOs should submit a description of the circumstances. We require that, at a minimum, the following information be reported:

(i) Vessel names (source vessel and other vessels associated with survey) and call signs

(ii) PSO names and affiliations

(iii) Dates of departures and returns to port with port name

(iv) Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort

(v) Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts

(vi) Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change

(vii) Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon

(viii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)

(ix) Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-ramp-up survey, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.)

(x) If a marine mammal is sighted, the following information should be recorded:

(A) Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform)

(B) PSO who sighted the animal

(C) Time of sighting

(D) Vessel location at time of sighting

(E) Water depth

(F) Direction of vessel's travel (compass direction)

(G) Direction of animal's travel relative to the vessel

(H) Pace of the animal

(I) Estimated distance to the animal and its heading relative to vessel at initial sighting

(J) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species

(K) Estimated number of animals (high/low/best)

(L) Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.)

(M) Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics)

(N) Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior)

(O) Animal's closest point of approach (CPA) and/or closest distance from the center point of the acoustic source;

(P) Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other)

(Q) Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.); time and location of the action should also be recorded

(xi) If a marine mammal is detected while using the PAM system, the following information should be recorded:

(A) An acoustic encounter identification number, and whether the detection was linked with a visual sighting

(B) Time when first and last heard

(C) Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal, etc.)

(D) Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), and any other notable information.

6. Reporting

(a) TGS shall submit monthly interim reports detailing the amount and location of line-kms surveyed, all marine mammal observations with closest approach distance, and corrected numbers of marine mammals ''taken,'' using correction factors given in Table 19.

(b) TGS shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of

survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). Geospatial data regarding locations where the acoustic source was used must be provided as an ESRI shapefile with all necessary files and appropriate metadata. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as required under condition 5(d) of this IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly to NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

(c) Reporting injured or dead marine mammals:

(i) In the event that the specified activity clearly causes the take of a marine mammal in a manner not prohibited by this IHA (if issued), such as serious injury or mortality, TGS shall immediately cease the specified activities and immediately report the incident to NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Name and type of vessel involved;

(C) Vessel's speed during and leading up to the incident;

(D) Description of the incident;

(E) Status of all sound source use in the 24 hours preceding the incident;

(F) Water depth;

(G) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) Description of all marine mammal observations in the 24 hours preceding the incident;

(I) Species identification or description of the animal(s) involved;

(J) Fate of the animal(s); and

(K) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with TGS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. TGS may not resume their activities until notified by NMFS.

(ii) In the event that TGS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), TGS shall immediately report the incident to NMFS. The report must include the same information identified in condition 6(c)(1) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with TGS to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that TGS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), TGS shall report the incident to NMFS within 24 hours of the discovery. TGS shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

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1. This incidental harassment authorization (IHA) is valid for a period of one year from the date of issuance.

2. This IHA is valid only for marine geophysical survey activity, as specified in ION's IHA application and using an array with characteristics specified in the application, in the Atlantic Ocean within BOEM's Mid- and South Atlantic OCS planning areas.

3. General Conditions

(a) A copy of this IHA must be in the possession of ION, the vessel operator and other relevant personnel, the lead protected species observer (PSO), and any other relevant designees of ION operating under the authority of this IHA.

(b) The species authorized for taking are listed in Table 11. The taking, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 11.

(c) The taking by serious injury or death of any of the species listed in Table 11 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 11 is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) ION shall ensure that the vessel operator and other relevant vessel personnel are briefed on all responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. ION shall instruct relevant vessel personnel with regard to the authority of the protected species monitoring team, and shall ensure that relevant vessel personnel and protected species monitoring team participate in a joint onboard briefing led by the vessel operator and lead PSO to ensure that responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements are clearly understood. This briefing must be repeated when relevant new personnel join the survey operations.

(e) During use of the acoustic source, if the source vessel encounters any marine mammal species that are not listed in Table 11, then the acoustic source must be shut down to avoid unauthorized take.

4. Mitigation Requirements

The holder of this Authorization is required to implement the following mitigation measures:

(a) ION must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, may have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course. NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.

(b) At least two PSOs must have a minimum of 90 days at-sea experience working as PSOs during a deep penetration seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. At least one of these must have relevant experience as a visual PSO and at least one must have relevant experience as an acoustic PSO. One ''experienced'' visual PSO shall be designated as the lead for

the entire protected species observation team. The lead shall coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. The lead PSO shall devise the duty schedule such that ''experienced'' PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience to the maximum extent practicable.

(c) Visual Observation

(i) During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur; whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array.

(ii) Visual monitoring must begin not less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset.

(iii) Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

(iv) Visual PSOs shall communicate all observations to acoustic PSOs, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(v) Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(vi) Any observations of marine mammals by crew members aboard any vessel associated with the survey, including chase vessels, shall be relayed to the source vessel and to the PSO team.

(vii) During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

(d) Acoustic Observation

(i) The source vessel must use a towed passive acoustic monitoring (PAM) system, which must be monitored beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source.

(ii) Acoustic PSOs shall communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(iii) Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(iv) Survey activity may continue for brief periods of time when the PAM system malfunctions or is damaged. Activity may continue for 30 minutes without PAM while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring under the following conditions:

(A) Daylight hours and sea state is less than or equal to BSS 4;

(B) No marine mammals (excluding small delphinoids) detected solely by PAM in the exclusion zone in the previous two hours;

(C) NMFS is notified via email as soon as practicable with the time and location in which operations began without an active PAM system; and

(D) Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

(e) Buffer Zone and Exclusion Zone—The PSOs shall establish and monitor a 500-m exclusion zone and a 1,000-m buffer zone. These zones shall be based upon radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. PSOs must monitor the buffer zone for a minimum of 30 minutes prior to ramp-up (*i.e.,* pre-clearance).

(f) Ramp-up—A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. Ramp-up may not be initiated if any marine mammal is within the designated buffer zone. If a marine mammal is observed within the buffer zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the buffer zone or until an additional time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species). PSOs would monitor the buffer zone during ramp-up, and ramp-up must cease and the source shut down upon observation of marine mammals within or approaching the buffer zone. Ramp-up may occur at times of poor visibility if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances. The operator must notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Total duration should be approximately 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed. Ramp-ups shall be scheduled so as to minimize the time spent with source activated prior to reaching the designated run-in.

(g) Shutdown Requirements

(i) Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source (visual PSOs on duty should be in agreement on the need for delay or shutdown before requiring such action). When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections must be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs and

initiation of dialogue as necessary. When there is certainty regarding the need for mitigation action on the basis of either visual or acoustic detection alone, the relevant PSO(s) must call for such action immediately. When only the acoustic PSO is on duty and a detection is made, if there is uncertainty regarding species identification or distance to the vocalizing animal(s), the acoustic source must be shut down as a precaution.

(ii) Upon completion of ramp-up, if a marine mammal appears within, enters, or appears on a course to enter the exclusion zone, the acoustic source must be shut down (*i.e.,* power to the acoustic source must be immediately turned off). If a marine mammal is detected acoustically, the acoustic source must be shut down, unless the acoustic PSO is confident that the animal detected is outside the exclusion zone or that the detected species is not subject to the shutdown requirement.

(A) This shutdown requirement is waived for dolphins of the following genera: *Steno, Tursiops, Stenella, Delphinus, Lagenodelphis,* and *Lagenorhynchus.* The shutdown waiver only applies if the animals are traveling, including approaching the vessel. If animals are stationary and the source vessel approaches the animals, the shutdown requirement applies. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, shutdown must be implemented.

(iii) Shutdown of the acoustic source is required upon observation of a right whale at any distance.

(iv) Shutdown of the acoustic source is required upon observation of a whale (*i.e.,* sperm whale or any baleen whale) with calf at any distance, with ''calf'' defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult.

(v) Shutdown of the acoustic source is required upon observation of a diving sperm whale at any distance centered on the forward track of the source vessel.

(vi) Shutdown of the acoustic source is required upon observation (visual or acoustic) of a beaked whale or *Kogia* spp. at any distance.

(vii) Shutdown of the acoustic source is required upon observation of an aggregation (*i.e.,* six or more animals) of marine mammals of any species that does not appear to be traveling.

(viii) Upon implementation of shutdown, the source may be reactivated after the animal(s) has been observed exiting the exclusion zone or following a 30-minute clearance period with no further observation of the animal(s). Where there is no relevant zone (*e.g.,* shutdown due to observation of a right whale), a 30-minute clearance period must be observed following the last observation of the animal(s).

(ix) If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 minutes), it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the exclusion zone and no acoustic detections have occurred. For any longer shutdown, pre-clearance watch and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required but if the shutdown period was brief and constant observation maintained, pre-clearance watch is not required.

(h) Miscellaneous Protocols

(i) The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided. Notified operational capacity (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be noticed to the PSO(s) on duty and fully documented. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

(ii) Testing of the acoustic source involving all elements requires normal mitigation protocols (*e.g.,* ramp-up). Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance.

(i) Closure Areas

(i) No use of the acoustic source may occur within 30 km of the coast.

(ii) From November 1 through April 30, no use of the acoustic source may occur within an area bounded by the greater of three distinct components at any location: (1) A 47-km wide coastal strip throughout the entire Mid- and South Atlantic OCS planning areas; (2) Unit 2 of designated critical habitat for the North Atlantic right whale, buffered by 10 km; and (3) the designated southeastern seasonal management area (SMA) for the North Atlantic right whale, buffered by 10 km. North Atlantic right whale dynamic management areas (DMA; buffered by 10 km) are also closed to use of the acoustic source when in effect. It is the responsibility of the survey operators to monitor appropriate media and to be aware of designated DMAs.

(iii) No use of the acoustic source may occur within Areas #2–5, as designated by coordinates in Table 3 during applicable time periods. Areas #2–4 are in effect year-round. Area #5 is in effect from July 1 through September 30.

(j) Vessel Strike Avoidance

(i) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down or stop their vessel or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale, or other marine mammal (*i.e.,* non-whale cetacean or pinniped). In this context, ''other whales'' includes sperm whales and all baleen whales other than right whales.

(ii) All vessels, regardless of size, must observe the 10 kn speed restriction in DMAs, the Mid-Atlantic SMA (from November 1 through April 30), and critical habitat and the Southeast SMA (from November 15 through April 15).

(iii) Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

(iv) All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. The following avoidance measures must be taken if a right whale is within 500 m of any vessel:

(A) While underway, the vessel operator must steer a course away from the whale at 10 kn or less until the minimum separation distance has been established.

(B) If a whale is spotted in the path of a vessel or within 100 m of a vessel underway, the operator shall reduce speed and shift engines to neutral. The operator shall re-engage engines only after the whale has moved out of the path of the vessel and is more than 100 m away. If the whale is still within 500 m of the vessel, the vessel must select a course away from the whale's course at a speed of 10 kn or less. This procedure must also be followed if a

whale is spotted while a vessel is stationary. Whenever possible, a vessel should remain parallel to the whale's course while maintaining the 500-m distance as it travels, avoiding abrupt changes in direction until the whale is no longer in the area.

(v) All vessels must maintain a minimum separation distance of 100 m from other whales. The following avoidance measures must be taken if a whale other than a right whale is within 100 m of any vessel:

(A) The vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established.

(B) If a vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m.

(vi) All vessels must maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel. If an animal is encountered during transit, a vessel shall attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course.

(k) All vessels associated with survey activity (*e.g.,* source vessels, chase vessels, supply vessels) must have a functioning Automatic Identification System (AIS) onboard and operating at all times, regardless of whether AIS would otherwise be required. Vessel names and call signs must be provided to NMFS, and applicants must notify NMFS when survey vessels are operating.

5. Monitoring Requirements

The holder of this Authorization is required to conduct marine mammal monitoring during survey activity. Monitoring shall be conducted in accordance with the following requirements:

(a) The operator must provide bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel. The operator must also provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, at the discretion of the PSOs. At minimum, the device should feature automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations.

(b) PSOs must also be equipped with reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (*i.e.,* Fujinon or equivalent), GPS, digital single-lens reflex camera of appropriate quality (*i.e.,* Canon or equivalent), compass, and any other tools necessary to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

(c) PSO Qualifications

(i) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

(ii) PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

(d) Data Collection—PSOs must use standardized data forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source to resume survey. If required mitigation was not implemented, PSOs should submit a description of the circumstances. We require that, at a minimum, the following information be reported:

(i) Vessel names (source vessel and other vessels associated with survey) and call signs

(ii) PSO names and affiliations

(iii) Dates of departures and returns to port with port name

(iv) Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort

(v) Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts

(vi) Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change

(vii) Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon

(viii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)

(ix) Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-ramp-up survey, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.)

(x) If a marine mammal is sighted, the following information should be recorded:

(A) Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform)

(B) PSO who sighted the animal

(C) Time of sighting

(D) Vessel location at time of sighting

(E) Water depth

(F) Direction of vessel's travel (compass direction)

(G) Direction of animal's travel relative to the vessel

(H) Pace of the animal

(I) Estimated distance to the animal and its heading relative to vessel at initial sighting

(J) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species

(K) Estimated number of animals (high/low/best)

(L) Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.)

(M) Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics)

(N) Detailed behavior observations (*e.g.,* number of blows, number of

surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior)

(O) Animal's closest point of approach (CPA) and/or closest distance from the center point of the acoustic source;

(P) Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other)

(Q) Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.); time and location of the action should also be recorded

(xi) If a marine mammal is detected while using the PAM system, the following information should be recorded:

(A) An acoustic encounter identification number, and whether the detection was linked with a visual sighting

(B) Time when first and last heard

(C) Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal, etc.)

(D) Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), and any other notable information.

6. Reporting

(a) ION shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). Geospatial data regarding locations where the acoustic source was used must be provided as an ESRI shapefile with all necessary files and appropriate metadata. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize data collected as required under condition 5(d) of this IHA and must provide corrected numbers of marine mammals ''taken,'' using correction factors given in Table 19. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly to NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

(b) Reporting injured or dead marine mammals:

(i) In the event that the specified activity clearly causes the take of a marine mammal in a manner not prohibited by this IHA (if issued), such as serious injury or mortality, ION shall immediately cease the specified activities and immediately report the incident to NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Name and type of vessel involved;

(C) Vessel's speed during and leading up to the incident;

(D) Description of the incident;

(E) Status of all sound source use in the 24 hours preceding the incident;

(F) Water depth;

(G) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) Description of all marine mammal observations in the 24 hours preceding the incident;

(I) Species identification or description of the animal(s) involved;

(J) Fate of the animal(s); and

(K) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with ION to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ION may not resume their activities until notified by NMFS.

(ii) In the event that ION discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), ION shall immediately report the incident to NMFS. The report must include the same information identified in condition 6(b)(1) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ION to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that ION discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ION shall report the incident to NMFS within 24 hours of the discovery. ION shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Western

1. This incidental harassment authorization (IHA) is valid for a period of one year from the date of issuance.

2. This IHA is valid only for marine geophysical survey activity, as specified in Western's IHA application and using an array with characteristics specified in the application, in the Atlantic Ocean within BOEM's Mid- and South Atlantic OCS planning areas.

3. General Conditions

(a) A copy of this IHA must be in the possession of Western, the vessel operator and other relevant personnel, the lead protected species observer (PSO), and any other relevant designees of Western operating under the authority of this IHA.

(b) The species authorized for taking are listed in Table 11. The taking, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 11.

(c) The taking by serious injury or death of any of the species listed in Table 11 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 11 is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) Western shall ensure that the vessel operator and other relevant vessel personnel are briefed on all responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. Western shall instruct relevant vessel personnel with regard to the authority of the protected species monitoring team, and shall ensure that relevant vessel personnel and protected species monitoring team participate in a joint onboard briefing led by the vessel operator and lead PSO to ensure that responsibilities, communication procedures, marine mammal monitoring

protocol, operational procedures, and IHA requirements are clearly understood. This briefing must be repeated when relevant new personnel join the survey operations.

(e) During use of the acoustic source, if the source vessel encounters any marine mammal species that are not listed in Table 11, then the acoustic source must be shut down to avoid unauthorized take.

4. Mitigation Requirements

The holder of this Authorization is required to implement the following mitigation measures:

(a) Western must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, may have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course. NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.

(b) At least two PSOs must have a minimum of 90 days at-sea experience working as PSOs during a deep penetration seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. At least one of these must have relevant experience as a visual PSO and at least one must have relevant experience as an acoustic PSO. One ''experienced'' visual PSO shall be designated as the lead for the entire protected species observation team. The lead shall coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. The lead PSO shall devise the duty schedule such that ''experienced'' PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience to the maximum extent practicable.

(c) Visual Observation

(i) During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur; whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array.

(ii) Visual monitoring must begin not less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset.

(iii) Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

(iv) Visual PSOs shall communicate all observations to acoustic PSOs, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(v) Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(vi) Any observations of marine mammals by crew members aboard any vessel associated with the survey, including chase vessels, shall be relayed to the source vessel and to the PSO team.

(vii) During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

(d) Acoustic Observation

(i) The source vessel must use a towed passive acoustic monitoring (PAM) system, which must be monitored beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source.

(ii) Acoustic PSOs shall communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(iii) Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(iv) Survey activity may continue for brief periods of time when the PAM system malfunctions or is damaged. Activity may continue for 30 minutes without PAM while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring under the following conditions:

(A) Daylight hours and sea state is less than or equal to BSS 4;

(B) No marine mammals (excluding small delphinoids) detected solely by PAM in the exclusion zone in the previous two hours;

(C) NMFS is notified via email as soon as practicable with the time and location in which operations began without an active PAM system; and

(D) Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

(e) Buffer Zone and Exclusion Zone—The PSOs shall establish and monitor a 500-m exclusion zone and a 1,000-m buffer zone. These zones shall be based upon radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. PSOs must monitor the buffer zone for a minimum of 30 minutes prior to ramp-up (*i.e.,* pre-clearance).

(f) Ramp-up—A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. Ramp-up may not be initiated if any marine mammal is within the designated buffer zone. If a marine mammal is observed within the buffer zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the buffer zone or until an additional time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species). PSOs would monitor the buffer zone during ramp-up, and ramp-up must cease and the source shut down upon observation of marine mammals within or approaching the buffer zone. Ramp-up may occur at times of poor visibility if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational

planning cannot reasonably avoid such circumstances. The operator must notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Total duration should be approximately 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed. Ramp-ups shall be scheduled so as to minimize the time spent with source activated prior to reaching the designated run-in.

(g) Shutdown Requirements

(i) Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source (visual PSOs on duty should be in agreement on the need for delay or shutdown before requiring such action). When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections must be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs and initiation of dialogue as necessary. When there is certainty regarding the need for mitigation action on the basis of either visual or acoustic detection alone, the relevant PSO(s) must call for such action immediately. When only the acoustic PSO is on duty and a detection is made, if there is uncertainty regarding species identification or distance to the vocalizing animal(s), the acoustic source must be shut down as a precaution.

(ii) Upon completion of ramp-up, if a marine mammal appears within, enters, or appears on a course to enter the exclusion zone, the acoustic source must be shut down (*i.e.,* power to the acoustic source must be immediately turned off). If a marine mammal is detected acoustically, the acoustic source must be shut down, unless the acoustic PSO is confident that the animal detected is outside the exclusion zone or that the detected species is not subject to the shutdown requirement.

(A) This shutdown requirement is waived for dolphins of the following genera: *Steno, Tursiops, Stenella, Delphinus, Lagenodelphis,* and *Lagenorhynchus.* The shutdown waiver only applies if the animals are traveling, including approaching the vessel. If animals are stationary and the source vessel approaches the animals, the shutdown requirement applies. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, shutdown must be implemented.

(iii) Shutdown of the acoustic source is required upon observation of a right whale at any distance.

(iv) Shutdown of the acoustic source is required upon observation of a whale (*i.e.,* sperm whale or any baleen whale) with calf at any distance, with ''calf'' defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult.

(v) Shutdown of the acoustic source is required upon observation of a diving sperm whale at any distance centered on the forward track of the source vessel.

(vi) Shutdown of the acoustic source is required upon observation (visual or acoustic) of a beaked whale or *Kogia* spp. at any distance.

(vii) Shutdown of the acoustic source is required upon observation of an aggregation (*i.e.,* six or more animals) of marine mammals of any species that does not appear to be traveling.

(viii) Upon implementation of shutdown, the source may be reactivated after the animal(s) has been observed exiting the exclusion zone or following a 30-minute clearance period with no further observation of the animal(s). Where there is no relevant zone (*e.g.,* shutdown due to observation of a right whale), a 30-minute clearance period must be observed following the last observation of the animal(s).

(ix) If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 minutes), it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the exclusion zone and no acoustic detections have occurred. For any longer shutdown, pre-clearance watch and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required but if the shutdown period was brief and constant observation maintained, pre-clearance watch is not required.

(h) Miscellaneous Protocols

(i) The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided. Notified operational capacity (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be noticed to the PSO(s) on duty and fully documented. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

(ii) Testing of the acoustic source involving all elements requires normal mitigation protocols (*e.g.,* ramp-up). Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance.

(i) Closure Areas

(i) No use of the acoustic source may occur within 30 km of the coast.

(ii) From November 1 through April 30, no use of the acoustic source may occur within an area bounded by the greater of three distinct components at any location: (1) A 47-km wide coastal strip throughout the entire Mid- and South Atlantic OCS planning areas; (2) Unit 2 of designated critical habitat for the North Atlantic right whale, buffered by 10 km; and (3) the designated southeastern seasonal management area (SMA) for the North Atlantic right whale, buffered by 10 km. North Atlantic right whale dynamic management areas (DMA; buffered by 10 km) are also closed to use of the acoustic source when in effect. It is the responsibility of the survey operators to monitor appropriate media and to be aware of designated DMAs.

(iii) No use of the acoustic source may occur within the areas designated by coordinates in Table 3 during applicable time periods. Area #1 is in effect from June 1 through August 31. Areas #2–4 are in effect year-round. Area #5 is in effect from July 1 through September 30.

(j) Vessel Strike Avoidance

(i) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down or stop their vessel or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters

stated below. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale, or other marine mammal (*i.e.,* non-whale cetacean or pinniped). In this context, ''other whales'' includes sperm whales and all baleen whales other than right whales.

(ii) All vessels, regardless of size, must observe the 10 kn speed restriction in DMAs, the Mid-Atlantic SMA (from November 1 through April 30), and critical habitat and the Southeast SMA (from November 15 through April 15).

(iii) Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

(iv) All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. The following avoidance measures must be taken if a right whale is within 500 m of any vessel:

(A) While underway, the vessel operator must steer a course away from the whale at 10 kn or less until the minimum separation distance has been established.

(B) If a whale is spotted in the path of a vessel or within 100 m of a vessel underway, the operator shall reduce speed and shift engines to neutral. The operator shall re-engage engines only after the whale has moved out of the path of the vessel and is more than 100 m away. If the whale is still within 500 m of the vessel, the vessel must select a course away from the whale's course at a speed of 10 kn or less. This procedure must also be followed if a whale is spotted while a vessel is stationary. Whenever possible, a vessel should remain parallel to the whale's course while maintaining the 500-m distance as it travels, avoiding abrupt changes in direction until the whale is no longer in the area.

(v) All vessels must maintain a minimum separation distance of 100 m from other whales. The following avoidance measures must be taken if a whale other than a right whale is within 100 m of any vessel:

(A) The vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established.

(B) If a vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m.

(vi) All vessels must maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel. If an animal is encountered during transit, a vessel shall attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course.

(k) All vessels associated with survey activity (*e.g.,* source vessels, chase vessels, supply vessels) must have a functioning Automatic Identification System (AIS) onboard and operating at all times, regardless of whether AIS would otherwise be required. Vessel names and call signs must be provided to NMFS, and applicants must notify NMFS when survey vessels are operating.

5. Monitoring Requirements

The holder of this Authorization is required to conduct marine mammal monitoring during survey activity. Monitoring shall be conducted in accordance with the following requirements:

(a) The operator must provide bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel. The operator must also provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, at the discretion of the PSOs. At minimum, the device should feature automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations.

(b) PSOs must also be equipped with reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (*i.e.,* Fujinon or equivalent), GPS, digital single-lens reflex camera of appropriate quality (*i.e.,* Canon or equivalent), compass, and any other tools necessary to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

(c) PSO Qualifications

(i) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

(ii) PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

(d) Data Collection—PSOs must use standardized data forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source to resume survey. If required mitigation was not implemented, PSOs should submit a description of the circumstances. We require that, at a minimum, the following information be reported:

(i) Vessel names (source vessel and other vessels associated with survey) and call signs

(ii) PSO names and affiliations

(iii) Dates of departures and returns to port with port name

(iv) Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort

(v) Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts

(vi) Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change

(vii) Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon

(viii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)

(ix) Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-ramp-up survey, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.)

(x) If a marine mammal is sighted, the following information should be recorded:

(A) Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform)

(B) PSO who sighted the animal

(C) Time of sighting

(D) Vessel location at time of sighting

(E) Water depth

(F) Direction of vessel's travel (compass direction)

(G) Direction of animal's travel relative to the vessel

(H) Pace of the animal

(I) Estimated distance to the animal and its heading relative to vessel at initial sighting

(J) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species

(K) Estimated number of animals (high/low/best)

(L) Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.)

(M) Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics)

(N) Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior)

(O) Animal's closest point of approach (CPA) and/or closest distance from the center point of the acoustic source;

(P) Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other)

(Q) Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.); time and location of the action should also be recorded

(xi) If a marine mammal is detected while using the PAM system, the following information should be recorded:

(A) An acoustic encounter identification number, and whether the detection was linked with a visual sighting

(B) Time when first and last heard

(C) Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal, etc.)

(D) Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), and any other notable information.

6. Reporting

(a) Western shall submit monthly interim reports detailing the amount and location of line-kms surveyed, all marine mammal observations with closest approach distance, and corrected numbers of marine mammals ''taken,'' using correction factors given in Table 19.

(b) Western shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). Geospatial data regarding locations where the acoustic source was used must be provided as an ESRI shapefile with all necessary files and appropriate metadata. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as required under condition 5(d) of this IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly to NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

(c) Reporting injured or dead marine mammals:

(i) In the event that the specified activity clearly causes the take of a marine mammal in a manner not prohibited by this IHA (if issued), such as serious injury or mortality, Western shall immediately cease the specified activities and immediately report the incident to NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Name and type of vessel involved;

(C) Vessel's speed during and leading up to the incident;

(D) Description of the incident;

(E) Status of all sound source use in the 24 hours preceding the incident;

(F) Water depth;

(G) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) Description of all marine mammal observations in the 24 hours preceding the incident;

(I) Species identification or description of the animal(s) involved;

(J) Fate of the animal(s); and

(K) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Western to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Western may not resume their activities until notified by NMFS.

(ii) In the event that Western discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Western shall immediately report the incident to NMFS. The report must include the same information identified in condition 6(c)(1) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Western to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that Western discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Western shall report the incident to NMFS within 24 hours of the discovery. Western shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if

NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

CGG

1. This incidental harassment authorization (IHA) is valid for a period of one year from the date of issuance.

2. This IHA is valid only for marine geophysical survey activity, as specified in CGG's IHA application and using an array with characteristics specified in the application, in the Atlantic Ocean within BOEM's Mid- and South Atlantic OCS planning areas.

3. General Conditions

(a) A copy of this IHA must be in the possession of CGG, the vessel operator and other relevant personnel, the lead protected species observer (PSO), and any other relevant designees of CGG operating under the authority of this IHA.

(b) The species authorized for taking are listed in Table 11. The taking, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 11.

(c) The taking by serious injury or death of any of the species listed in Table 11 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 11 is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) CGG shall ensure that the vessel operator and other relevant vessel personnel are briefed on all responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations. CGG shall instruct relevant vessel personnel with regard to the authority of the protected species monitoring team, and shall ensure that relevant vessel personnel and protected species monitoring team participate in a joint onboard briefing led by the vessel operator and lead PSO to ensure that responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and IHA requirements are clearly understood. This briefing must be repeated when relevant new personnel join the survey operations.

(e) During use of the acoustic source, if the source vessel encounters any marine mammal species that are not listed in Table 11, then the acoustic source must be shut down to avoid unauthorized take.

4. Mitigation Requirements

The holder of this Authorization is required to implement the following mitigation measures:

(a) CGG must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, may have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course. NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.

(b) At least two PSOs must have a minimum of 90 days at-sea experience working as PSOs during a deep penetration seismic survey, with no more than eighteen months elapsed since the conclusion of the at-sea experience. At least one of these must have relevant experience as a visual PSO and at least one must have relevant experience as an acoustic PSO. One ''experienced'' visual PSO shall be designated as the lead for the entire protected species observation team. The lead shall coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. The lead PSO shall devise the duty schedule such that ''experienced'' PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience to the maximum extent practicable.

(c) Visual Observation

(i) During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur; whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array.

(ii) Visual monitoring must begin not less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset.

(iii) Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

(iv) Visual PSOs shall communicate all observations to acoustic PSOs, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(v) Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(vi) Any observations of marine mammals by crew members aboard any vessel associated with the survey, including chase vessels, shall be relayed to the source vessel and to the PSO team.

(vii) During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

(d) Acoustic Observation

(i) The source vessel must use a towed passive acoustic monitoring (PAM) system, which must be monitored beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source.

(ii) Acoustic PSOs shall communicate all detections to visual PSOs, when visual PSOs are on duty, including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination.

(iii) Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours observation per 24-hour period.

(iv) Survey activity may continue for brief periods of time when the PAM system malfunctions or is damaged. Activity may continue for 30 minutes without PAM while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring under the following conditions:

(A) Daylight hours and sea state is less than or equal to BSS 4;

(B) No marine mammals (excluding small delphinoids) detected solely by PAM in the exclusion zone in the previous two hours;

(C) NMFS is notified via email as soon as practicable with the time and location in which operations began without an active PAM system; and

(D) Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

(e) Buffer Zone and Exclusion Zone—The PSOs shall establish and monitor a 500-m exclusion zone and a 1,000-m buffer zone. These zones shall be based upon radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source. PSOs must monitor the buffer zone for a minimum of 30 minutes prior to ramp-up (*i.e.,* pre-clearance).

(f) Ramp-up—A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. Ramp-up may not be initiated if any marine mammal is within the designated buffer zone. If a marine mammal is observed within the buffer zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the buffer zone or until an additional time period has elapsed with no further sightings (*i.e.,* 15 minutes for small odontocetes and 30 minutes for all other species). PSOs would monitor the buffer zone during ramp-up, and ramp-up must cease and the source shut down upon observation of marine mammals within or approaching the buffer zone. Ramp-up may occur at times of poor visibility if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances. The operator must notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Total duration should be approximately 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed. Ramp-ups shall be scheduled so as to minimize the time spent with source activated prior to reaching the designated run-in.

(g) Shutdown Requirements

(i) Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source (visual PSOs on duty should be in agreement on the need for delay or shutdown before requiring such action). When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections must be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs and initiation of dialogue as necessary. When there is certainty regarding the need for mitigation action on the basis of either visual or acoustic detection alone, the relevant PSO(s) must call for such action immediately. When only the acoustic PSO is on duty and a detection is made, if there is uncertainty regarding species identification or distance to the vocalizing animal(s), the acoustic source must be shut down as a precaution.

(ii) Upon completion of ramp-up, if a marine mammal appears within, enters, or appears on a course to enter the exclusion zone, the acoustic source must be shut down (*i.e.,* power to the acoustic source must be immediately turned off). If a marine mammal is detected acoustically, the acoustic source must be shut down, unless the acoustic PSO is confident that the animal detected is outside the exclusion zone or that the detected species is not subject to the shutdown requirement.

(A) This shutdown requirement is waived for dolphins of the following genera: *Steno, Tursiops, Stenella, Delphinus, Lagenodelphis,* and *Lagenorhynchus.* The shutdown waiver only applies if the animals are traveling, including approaching the vessel. If animals are stationary and the source vessel approaches the animals, the shutdown requirement applies. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, shutdown must be implemented.

(iii) Shutdown of the acoustic source is required upon observation of a right whale at any distance.

(iv) Shutdown of the acoustic source is required upon observation of a whale (*i.e.,* sperm whale or any baleen whale) with calf at any distance, with ''calf'' defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult.

(v) Shutdown of the acoustic source is required upon observation of a diving sperm whale at any distance centered on the forward track of the source vessel.

(vi) Shutdown of the acoustic source is required upon observation (visual or acoustic) of a beaked whale or *Kogia* spp. at any distance.

(vii) Shutdown of the acoustic source is required upon observation of an aggregation (*i.e.,* six or more animals) of marine mammals of any species that does not appear to be traveling.

(viii) Upon implementation of shutdown, the source may be reactivated after the animal(s) has been observed exiting the exclusion zone or following a 30-minute clearance period with no further observation of the animal(s). Where there is no relevant zone (*e.g.,* shutdown due to observation of a right whale), a 30-minute clearance period must be observed following the last observation of the animal(s).

(ix) If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for brief periods (*i.e.,* less than 30 minutes), it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the exclusion zone and no acoustic detections have occurred. For any longer shutdown, pre-clearance watch and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required but if the shutdown period was brief and constant observation maintained, pre-clearance watch is not required.

(h) Miscellaneous Protocols

(i) The acoustic source must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Notified operational capacity (not including redundant backup airguns) must not be exceeded during the survey, except where unavoidable for source testing and calibration purposes. All occasions where activated source volume exceeds notified operational capacity must be noticed to the PSO(s) on duty and fully documented. The lead PSO must be granted access to relevant instrumentation documenting acoustic source power and/or operational volume.

(ii) Testing of the acoustic source involving all elements requires normal mitigation protocols (*e.g.,* ramp-up). Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance.

(i) Closure Areas

(i) No use of the acoustic source may occur within 30 km of the coast.

(ii) From November 1 through April 30, no use of the acoustic source may occur within an area bounded by the greater of three distinct components at any location: (1) A 47-km wide coastal strip throughout the entire Mid- and South Atlantic OCS planning areas; (2) Unit 2 of designated critical habitat for the North Atlantic right whale, buffered by 10 km; and (3) the designated southeastern seasonal management area (SMA) for the North Atlantic right whale, buffered by 10 km. North Atlantic right whale dynamic management areas (DMA; buffered by 10 km) are also closed to use of the acoustic source when in effect. It is the responsibility of the survey operators to monitor appropriate media and to be aware of designated DMAs.

(iii) No use of the acoustic source may occur within Areas #2–5, as designated by coordinates in Table 3 during applicable time periods. Areas #2–4 are in effect year-round. Area #5 is in effect from July 1 through September 30.

(j) Vessel Strike Avoidance

(i) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down or stop their vessel or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale, or other marine mammal (*i.e.,* non-whale cetacean or pinniped). In this context, ''other whales'' includes sperm whales and all baleen whales other than right whales.

(ii) All vessels, regardless of size, must observe the 10 kn speed restriction in DMAs, the Mid-Atlantic SMA (from November 1 through April 30), and critical habitat and the Southeast SMA (from November 15 through April 15).

(iii) Vessel speeds must also be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

(iv) All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action. The following avoidance measures must be taken if a right whale is within 500 m of any vessel:

(A) While underway, the vessel operator must steer a course away from the whale at 10 kn or less until the minimum separation distance has been established.

(B) If a whale is spotted in the path of a vessel or within 100 m of a vessel underway, the operator shall reduce speed and shift engines to neutral. The operator shall re-engage engines only after the whale has moved out of the path of the vessel and is more than 100 m away. If the whale is still within 500 m of the vessel, the vessel must select a course away from the whale's course at a speed of 10 kn or less. This procedure must also be followed if a whale is spotted while a vessel is stationary. Whenever possible, a vessel should remain parallel to the whale's course while maintaining the 500-m distance as it travels, avoiding abrupt changes in direction until the whale is no longer in the area.

(v) All vessels must maintain a minimum separation distance of 100 m from other whales. The following avoidance measures must be taken if a whale other than a right whale is within 100 m of any vessel:

(A) The vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established.

(B) If a vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m.

(vi) All vessels must maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel. If an animal is encountered during transit, a vessel shall attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course.

(k) All vessels associated with survey activity (*e.g.,* source vessels, chase vessels, supply vessels) must have a functioning Automatic Identification System (AIS) onboard and operating at all times, regardless of whether AIS would otherwise be required. Vessel names and call signs must be provided to NMFS, and applicants must notify NMFS when survey vessels are operating.

5. Monitoring Requirements

The holder of this Authorization is required to conduct marine mammal monitoring during survey activity. Monitoring shall be conducted in accordance with the following requirements:

(a) The operator must provide bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel. The operator must also provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, at the discretion of the PSOs. At minimum, the device should feature automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations.

(b) PSOs must also be equipped with reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (*i.e.,* Fujinon or equivalent), GPS, digital single-lens reflex camera of appropriate quality (*i.e.,* Canon or equivalent), compass, and any other tools necessary to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

(c) PSO Qualifications

(i) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

(ii) PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such

a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

(d) Data Collection—PSOs must use standardized data forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source to resume survey. If required mitigation was not implemented, PSOs should submit a description of the circumstances. We require that, at a minimum, the following information be reported:

(i) Vessel names (source vessel and other vessels associated with survey) and call signs

(ii) PSO names and affiliations

(iii) Dates of departures and returns to port with port name

(iv) Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort

(v) Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts

(vi) Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change

(vii) Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon

(viii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions)

(ix) Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-ramp-up survey, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.)

(x) If a marine mammal is sighted, the following information should be recorded:

(A) Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform)

(B) PSO who sighted the animal

(C) Time of sighting

(D) Vessel location at time of sighting

(E) Water depth

(F) Direction of vessel's travel (compass direction)

(G) Direction of animal's travel relative to the vessel

(H) Pace of the animal

(I) Estimated distance to the animal and its heading relative to vessel at initial sighting

(J) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species

(K) Estimated number of animals (high/low/best)

(L) Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.)

(M) Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics)

(N) Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior)

(O) Animal's closest point of approach (CPA) and/or closest distance from the center point of the acoustic source;

(P) Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other)

(Q) Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.); time and location of the action should also be recorded

(xi) If a marine mammal is detected while using the PAM system, the following information should be recorded:

(A) An acoustic encounter identification number, and whether the detection was linked with a visual sighting

(B) Time when first and last heard

(C) Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal, etc.)

(D) Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), and any other notable information.

6. Reporting

(a) CGG shall submit monthly interim reports detailing the amount and location of line-kms surveyed, all marine mammal observations with closest approach distance, and corrected numbers of marine mammals ''taken,'' using correction factors given in Table 19.

(b) CGG shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). Geospatial data regarding locations where the acoustic source was used must be provided as an ESRI shapefile with all necessary files and appropriate metadata. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as required under condition 5(d) of this IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly to NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

(c) Reporting injured or dead marine mammals:

(i) In the event that the specified activity clearly causes the take of a marine mammal in a manner not prohibited by this IHA (if issued), such as serious injury or mortality, CGG shall immediately cease the specified activities and immediately report the incident to NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Name and type of vessel involved;

(C) Vessel's speed during and leading up to the incident;

(D) Description of the incident;

(E) Status of all sound source use in the 24 hours preceding the incident;

(F) Water depth;

(G) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) Description of all marine mammal observations in the 24 hours preceding the incident;

(I) Species identification or description of the animal(s) involved;

(J) Fate of the animal(s); and

(K) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with CGG to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CGG may not resume their activities until notified by NMFS.

(ii) In the event that CGG discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), CGG shall immediately report the incident to NMFS. The report must include the same information identified in condition 6(c)(1) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CGG to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that CGG discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CGG shall report the incident to NMFS within 24 hours of the discovery. CGG shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorizations, and any other aspect of this Notice of Proposed IHAs for the proposed geophysical survey activities. Please include with your comments any supporting data or literature citations to help inform our final decision on the individual requests for MMPA authorization.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–11542 Filed 6–5–17; 8:45 am]

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