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# Rules and Regulations

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Tuesday, March 20, 2018

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 73

**[Docket No. FAA–2018–0102; Airspace Docket No. 17–AWP–20]**

## Modification to Restricted Areas R–2501E, R–2501N, R–2501W, and R–2501S; Bullion Mountains, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, technical amendment.

**SUMMARY:** This action amends the internal subdivision of R–2501 at United States Marine Corps (USMC) Air Ground Combat Center, Twentynine Palms, CA. Restricted Areas R–2501E, R–2501N, R–2501S, and R–2501W; Bullion Mountains, CA will be deleted and reestablished as restricted areas R–2501A, R–2501B, R–2501C, R–2501D, and R–2501E. This action does not alter the overall vertical or lateral boundary of the restricted area complex, designated altitudes, times of designation, controlling agency, using agency, or activities conducted within the Twentynine Palms complex.

**DATES:** Effective date 0901 UTC, May 24, 2018.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Ready, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the 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 removes restricted areas R–2501E, R–2501N, R–2501S, and R–2501W; Bullion Mountains, CA and realigns the internal boundaries of the Twentynine Palms Complex to restricted areas R–2501A, R–2501B, R–2501C, R–2501D, and R–2501E; Bullion Mountains, CA.

### Background

In January 2015, a Special Use Airspace (SUA) review team comprised of members from the FAA and the USMC convened for the purpose of evaluating the safety and efficiency of R–2501 as an integral part of the National Airspace System (NAS). The team recognized that R–2501 is situated in a highly dynamic and increasingly strategic area within the NAS due to its close proximity to multiple large capacity terminal areas in Southern California, numerous arrival and departure routings, and expected future enhancements such as METROPLEX procedures to promote efficiency.

Although it was the consensus of the Team for the retention of R–2501, there was also agreement that improvements to the scheduling and coordination processes must be made to enhance efficiency to the NAS and allow more frequent access to non-participating aircraft while maintaining the availability of R–2501 to meet mission requirements. Accordingly, a functional working group was convened from team members to collaboratively identify where efficiencies and improvements could be made in meeting these objectives.

One major potential improvement decided upon was to redesign the internal subdivisions of R–2501 from their current ''puzzle piece'' depiction to reflect a more layered configuration oriented along a northwest-southeast axis without actually changing the existing peripheral boundary of the restricted area. Thus, the aggregate geographical footprint of R–2501 will remain unchanged, while only the internal sectorization is altered. After several negotiations between the FAA and USMC, a final prototype was agreed on and placed into operational use in July 2017 through an update to the joint-use Letter of Procedure between Los Angeles Air Route Traffic Control Center (ARTCC) and USMC. Immediate and continued feedback has been positive from all concerned and the FAA is taking action to legally change the existing internal boundaries of R–2501N, R–2501E, R–2501S, R–2501W to reflect the new boundaries of R–2501A, R–2501B, R–2501C, R–2501D, and R–2501E. The internal alterations improve airspace efficiency by better compartmentalizing the cumulative impact to the NAS and thus enhance joint-use procedures.

### The Rule

This action amends 14 CFR part 73 by removing restricted areas R–2501N, R–2501E, R–2501S, R–2501W and establishing R–2501A, R–2501B, R–2501C, R–2501D, and R–2501E; Bullion Mountains, CA. This action does not alter the overall outer vertical or lateral boundary of the Twentynine Palms complex. The FAA is taking this internal boundary realignment action to allow critical commercial air routes into the Los Angeles basin without impacting training at USMC Air Ground Combat Center, Twentynine Palms, CA.

This is an administrative change that does not alter the boundaries, designated altitudes, or activities conducted within the restricted areas; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

### 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 Department of Transportation (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 of amending the internal subdivision of certain Restricted Ares within the Twentynine Palms complex, qualifies for categorical exclusion under the National Environmental Policy Act and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5.d, ''Modification of the technical description of special use airspace (SUA) that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors).'' This airspace action is an administrative change to the internal subdivision of Restricted Areas within the Twentynine Palms complex. It does not alter the dimensions, altitudes, time of designation, or use of the airspace. Therefore, this airspace action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 73**

Airspace, Prohibited areas, Restricted areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

**§ 73.25 [Amended]**

■ 2. Section 73.25 is amended as follows:

**R–2501E Bullion Mountains, CA [Removed]**

**R–2501N Bullion Mountains, CA [Removed]**

**R–2501S Bullion Mountains, CA [Removed]**

**R–2501W Bullion Mountains, CA [Removed]**

**R–2501A Bullion Mountains, CA [New]**

*Boundaries.* Beginning at lat. 34°43′00 N, long. 116°26′23″ W; to lat. 34°43′00″ N, long. 116°17′03″ W; to lat. 34°39′24″ N, long. 116°29′19″ W; to lat. 34°40′30″ N, long. 116°29′43″ W; to the point of beginning.
*Designated altitudes.* Unlimited.
*Time of designation.* Continuous.
*Controlling agency.* FAA, Los Angeles ARTCC.
*Using agency.* Commanding General Marine Corps Base, Twentynine Palms, CA.

**R–2501B Bullion Mountains, CA [New]**

*Boundaries.* Beginning at lat. 34°39′24″ N, long. 116°29′19″ W; to lat. 34°43′00″ N, long. 116°17′03″ W; to lat. 34°41′15″ N, long. 116°04′33″ W; to lat. 34°41′00″ N, long.116°03′03″ W; to lat. 34°31′30″ N, long. 116°26′48″ W; to lat. 34°36′00″ N, long. 116°28′03″ W; to the point of beginning.
*Designated altitudes.* Unlimited.
*Time of designation.* Continuous.
*Controlling agency.* FAA, Los Angeles ARTCC.
*Using agency.* Commanding General, Marine Corps Base, Twentynine Palms, CA.

**R–2501C Bullion Mountains, CA [New]**

*Boundaries.* Beginning at lat. 34°31′30″ N, long. 116°26′48″ W; to lat. 34°41′00″ N, long. 116°03′03″ W; to lat. 34°35′30″ N, long. 115°58′03″ W; to lat. 34°34′40″ N, long.115°54′58″ W.; to lat. 34°33′41″ N, long. 115°50′24″ W; to lat. 34°21′35″ N, long. 116°21′38″ W; to lat. 34°30′00″ N, long. 116°26′23″ W; to the point of beginning.
*Designated altitudes.* Unlimited.
*Time of designation.* Continuous.
*Controlling agency.* FAA, Los Angeles ARTCC.
*Using agency.* Commanding General, Marine Corps Base, Twentynine Palms, CA.

**R–2501D Bullion Mountains, CA [New]**

*Boundaries.* Beginning at lat. 34°21′35″ N, long. 116°21′38″ W; to lat. 34°33′41″ N, long. 115°50′24″ W; to lat. 34°33′00″ N, long. 115°47′03″ W; to lat. 34°25′00″ N, long.115°47′03″ W; to lat. 34°25′00″ N, long. 115°44′03″ W; to lat. 34°17′00″ N, long. 115°44′03″ W; to lat. 34°14′01″ N, long. 115°59′00″ W; to lat. 34°14′00″ N, long. 116°17′03″ W; to lat. 34°19′30″ N, long. 116°20′29″ W; to the point of beginning.
*Designated altitudes.* Unlimited.
*Time of designation.* Continuous.
*Controlling agency.* FAA, Los Angeles ARTCC.
*Using agency.* Commanding General, Marine Corps Base, Twentynine Palms, CA.

**R–2501E Bullion Mountains, CA [New]**

*Boundaries.* Beginning at lat. 34°17′00″ N, long. 115°44′03″ W; to lat. 34°14′00″ N, long. 115°44′03″ W; to lat. 34°14′01″ N, long. 115°59′00″ W; to the point of beginning.
*Designated altitudes.* Unlimited.
*Time of designation.* Continuous.
*Controlling agency.* FAA, Los Angeles ARTCC.
*Using agency.* Commanding General, Marine Corps Base, Twentynine Palms, CA.

* * * * *

Issued in Washington, DC, on March 12, 2018.

**Rodger A. Dean, Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2018–05586 Filed 3–19–18; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2017–1105]**

## Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone—San Diego Crew Classic

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the San Diego Crew Classic special local regulations on the waters of Mission Bay, California on March 24, 2018 and March 25, 2018. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

**DATES:** The regulations in 33 CFR 100.1101 will be enforced from 7:00 a.m. until 7:00 p.m. on March 24, 2018, and from 7:00 a.m. until 7:00 p.m. on March 25, 2018 for Item 3 in Table 1 of § 100.1101.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this publication of enforcement, call or email Lieutenant Junior Grade Briana Biagas, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the San Diego Crew Classic in Mission Bay, CA in 33 CFR 100.1101, Table 1, Item 3 of that section from 7:00

a.m. until 7:00 p.m. on March 24, 2018, and from 7:00 a.m. until 7:00 p.m. on March 25, 2018. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 100.1101. In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: February 15, 2018.

**J.R. Buzzella,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2018–05606 Filed 3–19–18; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2018–0158]**

**RIN 1625–AA00**

## Safety Zone; Delaware River, Diving Operation, Marcus Hook, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone encompassing all navigable waters within a 250-yard radius of Commerce Construction vessels and machinery conducting survey and diving operations in the Delaware River, in the vicinity of Anchorage 7, near Marcus Hook, PA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by survey and diving operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay.

**DATES:** This rule is effective without actual notice from March 20, 2018, through 6 p.m. on March 22, 2018. For the purposes of enforcement, actual notice will be used from 6 a.m. on March 15, 2018, through March 20, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0158 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 Petty Officer Amanda Boone, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271–4889, email *Amanda.N.Boone@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

On March 11, 2018, the Coast Guard was notified of survey and diving operations that will be taking place from March 15, 2018 through March 22, 2018, in Marcus Hook Anchorage No. 7, on the Delaware River. The COTP has determined that a safety zone is necessary to mitigate the hazards involving survey and diving operations. The safety zone covers all navigable waters within 250 yards of vessels and machinery being used by personnel to conduct survey and diving operations.

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 notification of the survey and diving operations was not given to the Coast Guard until March 11, 2018. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by March 15, 2018 to protect persons involved with the survey and diving operations as well members of the public who may be near those operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to address the potential safety hazards associated with survey and diving operations.

### 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 survey and diving operations starting March 15, 2018, will be a safety concern for anyone within a 250-yard radius of diving and pipe removal vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operations are being conducted.

### IV. Discussion of the Rule

This rule establishes a safety zone from 6 a.m. Monday, March 15, 2018, through 6 p.m. Friday, March 22, 2018. Notification of dates and times of safety zone enforcement will be sent to the maritime community via Broadcast Notice to Mariners and Marine Safety Information Bulletins. Marine Safety Information Bulletins may be obtained from *https://homeport.uscg.mil/port-directory/delaware-bay* or by calling the Coast Guard Delaware Bay Command Center at 215–271–4807. The safety zone will cover all navigable waters within 250 yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, on the Delaware River. The work will be conducted in the southern most portion of the Anchorage on the eastern side adjacent to the New Jersey shoreline. During diving and removal operations, the safety zone will restrict vessels from

anchoring in the lower portion of Anchorage No. 7.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. The safety zone which will impact a small designated area of the Marcus Hook Anchorage No. 7, in the Delaware River, from 6 a.m. through 6 p.m., Monday through Friday, beginning March 15, 2018 through March 22, 2018. Vessel traffic will be able to safely transit the main navigational channel during that time. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16, Local Notice to Mariners, and Marine Safety Information Bulletin about the zone.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 250 yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, on the Delaware River. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

### *G. Protest Activities*

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

## List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 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.T05–0158 to read as follows:

**§ 165.T05–0158 Safety Zone, Delaware River; Diving Operations; Marcus Hook, PA.**

(a) *Location.* The following areas are safety zones: all navigable waters within 250 yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, on the Delaware River.

(b) *Definitions.* (1) *Captain of the Port* means the Commander, Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist with the enforcement of safety zones described in paragraph (a) of this section.

(c) *Regulations.* The general safety zone regulations found in subpart C of this part apply to the safety zone created by this section.

(1) Entry into or transiting within the zone is prohibited unless vessels obtain permission from the Captain of the Port via VHF–FM channel 16, or make satisfactory passing arrangements via VHF–FM channels 13 or 80 with the on-scene 25 foot diving vessel.

(2) No vessels may anchor in the lower portion of Marcus Hook Anchorage No. 7 for the duration of the enforcement period.

(3) All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement periods.* This section will be enforced from 6 a.m. through 6 p.m., Monday through Friday, beginning March 15, 2018, through March 22, 2018.

Dated: March 14, 2018.

**Scott E. Anderson,**

*Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.*

[FR Doc. 2018–05567 Filed 3–19–18; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0089]**

### Safety Zones; Fireworks in Captain of the Port New York Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels, spectators and participants from hazards associated with fireworks. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

**DATES:** The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Petty Officer First Class Ronald Sampert U.S. Coast Guard; telephone 718–354–4197, email *ronald.j.sampert@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Tables 1 and 2 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

| | |
|---|---|
| 1. 2018 Chinese New Year; Pier 84 Hudson River Safety Zone; 33 CFR 165.160(5.9). | • Launch site: A barge located in approximate position 40°45′56.90″ N, 074°00′25.4″ W (NAD 1983), approximately 380 yards west of Pier 84, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge.<br>• Date: February 14, 2018.<br>• Time: 7:30 p.m.–9:30 p.m. |
| 2. Briggs Inc. AAA Horn Blower; Ellis Island Safety Zone; 33 CFR 165.160(2.2). | • Launch site: A barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″ N, 074°02′09″ W (NAD 1983) about 365 yards east of Ellis Island. This Safety Zone is a 360-yard radius from the barge.<br>• Date: April 22, 2018.<br>• Time: 8:15 p.m.–8:25 p.m. |
| 3. Breezy Point Co-Op Inc.; Rockaway Inlet Safety Zone; 33 CFR 165.160(2.9). | • Launch site: A barge located in approximate position 40°34′19.1″ N, 073°54′43.5″ W (NAD 1983). 1200 yards south of Point Breeze. This Safety Zone is a 360-yard radius from the barge.<br>• Date: July 6, 2018.<br>• Time: 9:00 p.m.–10:00 p.m. |

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via

the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: February 14, 2018.

**M. H. Day,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2018–05607 Filed 3–19–18; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[EPA–HQ–OAR–2016–0069; FRL–9975–62–OAR]**

**RIN 2060–AT17**

## Revisions to Method 301: Field Validation of Pollutant Measurement Methods From Various Waste Media

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is publishing editorial and technical revisions to the EPA's Method 301 ''Field Validation of Pollutant Measurement Methods from Various Waste Media'' to correct and update the method. In addition, the EPA is clarifying the regulatory applicability of Method 301 as well as its suitability for use with other regulations. The revisions include ruggedness testing for validation of test methods intended for application at multiple sources, determination of the limit of detection for all method validations, incorporating procedures for determining the limit of detection, revising the sampling requirements for the method comparison procedure, adding storage and sampling procedures for sorbent sampling systems, and clarifying acceptable statistical results for candidate test methods. We are also clarifying the applicability of Method 301 to our regulations and adding equations to clarify calculation of the correction factor, standard deviation, estimated variance of a validated test method, standard deviation of differences, and t-statistic for all validation approaches. We have also made minor changes in response to public comments. Changes made to the Method 301 field validation protocol under this action apply only to methods submitted to the EPA for approval after the effective date of this final rule.

**DATES:** The final rule is effective on March 20, 2018.

**ADDRESSES:** We have established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2016–0069. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Segall, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–0893; fax number: (919) 541–0516; email address: *segall.robin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The information in this preamble is organized as follows:

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### I. General Information

*A. Does this action apply to me?*

Method 301 applies to you, under 40 CFR 63.7(f) or 40 CFR 65.158(a)(2)(iii), when you want to use an alternative to a required test method to meet an applicable requirement or when there is no required or validated test method. In addition, the validation procedures of Method 301 may be used as a tool for demonstration of the suitability of alternative test methods under 40 CFR 59.104 and 59.406, 40 CFR 60.8(b), and 40 CFR 61.13(h)(1)(ii). If you have questions regarding the applicability of the changes to Method 301, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of the method revisions is available on the Air Emission Measurement Center (EMC) website at *https://www.epa.gov/emc/.* The EMC provides information regarding stationary source air emissions test methods and procedures.

*C. Judicial Review and Administrative Reconsideration*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by May 21, 2018. Under CAA section 307(b)(2), the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to reconsider the rule ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a

Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

## II. Background

The EPA proposed revisions to Method 301 on December 2, 2016 (81 FR 87003). The EPA received one comment letter on the proposed revisions to EPA Method 301, which is addressed in Section IV of this preamble.

The EPA originally published Method 301 (appendix A to 40 CFR part 63, Test Methods) on December 29, 1992 (57 FR 61970), as a field validation protocol method to be used to validate new test methods for hazardous air pollutants (HAP) in support of the Early Reductions Program of part 63 when existing test methods were inapplicable. On March 16, 1994, the EPA incorporated Method 301 into 40 CFR 63.7 (59 FR 12430) to provide procedures for validating a candidate test method as an alternative to a test method specified in a standard or for use where no test method is provided in a standard.

Method 301 specifies procedures for determining and documenting the bias and precision of a test method that is a candidate for use as an alternative to a test method specified in an applicable regulation. Method 301 has also been required for validating test methods to be used in demonstrating compliance with a regulatory standard in the absence of a validated test method. Method 301 is required for these purposes under 40 CFR 63.7(f) and 40 CFR 65.158(a)(2)(iii), and is an appropriate tool for demonstration and validation of alternative methods under 40 CFR 59.104 and 59.406, 40 CFR 60.8(b), and 40 CFR 61.13(h)(1)(ii). The procedures specified in Method 301 are applicable to various media types (*e.g.,* sludge, exhaust gas, wastewater).

Bias (or systemic error) is established by comparing measurements made using a candidate test method against reference values, either reference materials or a validated test method. Where needed, a correction factor for source-specific application of the method is employed to eliminate/minimize bias. This correction factor is established from data obtained during the validation test. Methods that have bias correction factors outside a specified range are considered unacceptable. Method precision (or random error) must be demonstrated to be as precise as the validated method for acceptance or less than or equal to 20 percent when the candidate method is being evaluated using reference materials.

Neither the Method as originally established on December 29, 1992, nor the subsequent revision on May 18, 2011 (76 FR 28664), have distinguished requirements for single-source applications of a candidate method from those that apply at multiple sources. The revisions promulgated in this action recognize that requirements related to bias and ruggedness testing should differ between single-source and multiple-source application of an alternative method. Additionally, through our reviews of submitted Method 301 data packages and response to questions from industry, technology vendors, and testing organizations seeking to implement the method, we recognized that there was confusion with the specific testing requirements and the statistical calculations associated with each of the three ''Sampling Procedures.'' To improve the readability and application of Method 301, we proposed and are finalizing minor edits throughout the method text to clarify the descriptions and requirements for assessing bias and precision for each ''Sampling Procedure'' and have added equations to ensure that required calculations and acceptance criteria for each of the three sampling approaches are clear.

## III. Summary of Final Amendments

In this section, we discuss the final amendments to Method 301, the changes since proposal, and the rationale for the changes. We are finalizing clarifications to the regulatory applicability of Method 301 and its suitability for use with other regulations, as well as finalizing technical revisions and editorial changes intended to clarify and update the requirements and procedures specified in Method 301.

### *A. Technical Revisions*

#### 1. Applicability of Ruggedness Testing and Limit of Detection Determination

In this action, we are amending sections 3.1 and 14.0 to require ruggedness testing when using Method 301 to validate a candidate test method intended for application to multiple sources. Ruggedness testing is optional for validation of methods intended for single-source applications. We are also amending sections 3.1 and 15.0 to require determination of the limit of detection (LOD) for validation of all methods (*i.e.,* those intended for both single-source and multi-source application). Additionally, we are clarifying the LOD definition in section 15.1.

Ruggedness testing of a test method is a laboratory study to determine the sensitivity of the method by measuring its capacity to remain unaffected by small, but deliberate variations in method parameters such as sample collection rate and sample recovery temperature to provide an indication of its reliability during normal usage. Requiring ruggedness testing and determination of the LOD for validation of a candidate test method that is intended for use at multiple sources will further inform the EPA's determination of whether the candidate test method is valid across a range of source emission matrices, varying method parameters, and conditions. Additionally, conducting an LOD determination for both single- and multi-source validations will account for the sensitivity of the candidate test method to ensure it meets applicable regulatory requirements.

#### 2. Limit of Detection Procedures

In this action, the EPA is finalizing revisions to the requirements for determining the LOD specified in section 15.2 and Table 301–5 (Procedure I) of Method 301 to reference the procedures for determining the method detection limit (MDL) in 40 CFR part 136, appendix B, as revised on August 28, 2017 (82 FR 40836), which addresses laboratory blank contamination and accounts for intra-laboratory variability. Procedure I of Table 301–5 of Method 301 is used for determining an LOD when an analyte in a sample matrix is collected prior to an analytical measurement or the estimated LOD is no more than twice the calculated LOD. For the purposes of Method 301, LOD will now be equivalent to the calculated MDL determined using the procedures specified in 40 CFR part 136, appendix B.

When EPA proposed revisions to Method 301 (81 FR 87003; December 2, 2016), we noted in the preamble that the Method 301 revisions were referencing *proposed* revisions to the MDL calculation procedures of 40 CFR part 136, appendix B. At that time, we stated, ''If the revisions to 40 CFR part 136, appendix B are finalized as proposed prior to a final action on this [Method 301] proposal, we will cross-reference appendix B. If appendix B is finalized before this action and the

revisions do not incorporate the procedures as described above, the EPA intends to incorporate the specific procedures for determining the LOD in the final version of Method 301 consistent with this proposal.'' The appendix B provisions of 40 CFR part 136 were recently finalized with the Clean Water Act Methods Update Rule on August 28, 2017 (82 FR 40836). As a result of comments on the proposed Methods Update rule, there were minor clarifications, but ''[n]o significant revisions were made to the proposed MDL procedure'' of appendix B as stated in Section III.I of the preamble to that rule. Because the Methods Update rule containing the MDL procedure was finalized with no significant changes, and we have determined that the final requirements of appendix B are appropriate for the CAA programs at issue, we are cross-referencing the finalized MDL determination calculation procedure of 40 CFR part 136, appendix B, in section 15.2 and Table 301–5 of Method 301.

3. Storage and Sampling Procedures

In this action, we are finalizing the proposed revisions to sections 9.0 and 11.1.3 and Table 301–1 of Method 301 to require, at a minimum, six sets of quadruplicate samples (a total of 24 samples) for comparison of a candidate method against a validated method rather than four sets of quadruplicate samples or nine sets of paired samples, as currently required. These revisions ensure that the bias and precision requirements are consistent between the various sampling approaches in the method and decreases the amount of uncertainty in the calculations for bias and precision when comparing an alternative or candidate test method with a validated method. Bias and precision (standard deviation and variance) are inversely related to the number of sampling trains (sample results) used to estimate the difference between the alternative test method and the validated method. As the number of trains increases, the uncertainty in the bias and precision estimates decreases. Larger data sets provide better estimates of the standard deviation or variance and the distribution of the data. The revision to collect a total of 24 samples when using the comparison against a validated method approach is also consistent with the number of samples required for both the analyte spiking and the isotopic spiking approaches. The 12 samples collected when conducting the isotopic spiking approach are equivalent to the 24 samples collected using the analyte spiking approach because the isotopic labelling of the spike allows each of the 12 samples to yield two results (one result for an unspiked sample, and one result for a spiked sample).

For validations conducted by comparing the candidate test method to a validated test method, we are also finalizing the following additions: (1) Storage and sampling procedures for sorbent systems requiring thermal desorption to Table 301–2 of Method 301, and (2) a new Table 301–4 of Method 301 to provide a look-up table of F values for the one-sided confidence level used in assessing the precision of the candidate test method. We also are amending the reference list in section 18.0 to include the source of the F values in Table 301–4.

4. Bias Criteria for Multi-Source Versus Single-Source Validation

In this action, we are finalizing revisions that clarify sections 8.0, 10.3, and 11.1.3 of Method 301 to specify that candidate test methods intended for use at multiple sources must have a bias less than or equal to 10 percent. Candidate test methods with a bias greater than 10 percent, but less than 30 percent, are applicable only at the source at which the validation testing was conducted, and data collected in the future must be adjusted for bias using a source-specific correction factor. A single-source correction factor is not appropriate for use at multiple sources. This change provides flexibility for source-specific Method 301 application while limiting the acceptance criteria for use of the method at multiple sources.

5. Relative Standard Deviation Assessment

In sections 9.0 and 12.2 of Method 301, we are finalizing language regarding the interpretation of the relative standard deviation (RSD) when determining the precision of a candidate test method using the analyte spiking or isotopic spiking procedures. For a test method to be acceptable, we proposed that the RSD of a candidate test method must be less than or equal to 20 percent. Accordingly, we are removing the sampling provisions for cases where the RSD is greater than 20 percent, but less than 50 percent. Poor precision makes it difficult to detect potential bias in a test method. For this reason, we proposed and are now finalizing an acceptance criterion of less than or equal to 20 percent for analyte and isotopic spiking sampling procedures.

6. Applicability of Method 301

Although 40 CFR 65.158(a)(2)(iii) specifically cross-references Method 301, Method 301 formerly did not reference part 65. For parts 63 and 65, Method 301 must be used for establishing an alternative test method. Thus, in this action, we are finalizing language that clarifies that Method 301 is applicable to both parts 63 and 65 and that Method 301 may be used for validating alternative test methods under the following parts of Title 40 of the CAA:

- Part 59 (National Volatile Organic Compound Emission Standards for Consumer and Commercial Products).
- Part 60 (Standards of Performance for New Stationary Sources).
- Part 61 (National Emission Standards for Hazardous Air Pollutants).

We believe that the Method 301 procedures for determining bias and precision provide a suitable technical approach for assessing candidate or alternative test methods for use under these regulatory parts because the testing provisions are very similar to those under parts 63 and 65. To accommodate the expanded applicability and suitability, we are revising the references in sections 2.0, 3.2, 5.0, 13.0, 14.0, and 16.1 of Method 301 to refer to all five regulatory parts.

7. Equation Additions

In this action, we are clarifying the procedures in Method 301 by adding the following equations:

- Equation 301–8 in section 10.3 for calculating the correction factor.
- Equation 301–11 in section 11.1.1 and Equation 301–19 in section 12.1.1 for calculating the numerical bias.
- Equation 301–12 in section 11.1.2 and Equation 301–20 in section 12.1.2 for determining the standard deviation of differences.
- Equation 301–13 in section 11.1.3 and Equation 301–21 in section 12.1.3 for calculating the t-statistic.
- Equation 301–15 in section 11.2.1 to estimate the variance of the validated test method.
- Equation 301–23 in section 12.2 for calculating the standard deviation.

We also are revising the denominator of Equation 301–22 to use the variable ''CS'' rather than ''VS.'' Additionally, we are revising the text of Method 301, where needed, to list and define all variables used in the method equations. These changes are intended to improve the readability of the method and ensure that required calculations and acceptance criteria for each of the three validation approaches in Method 301 are clear.

*B. Clarifying and Editorial Changes*

In this action, we are applying minor edits throughout the text of Method 301 to clarify the descriptions and

requirements for assessing bias and precision, to ensure consistency when referring to citations within the method, to renumber equations and tables (where necessary), and to remove passive voice.

In addition, we are clarifying several definitions in section 3.2. In the definition of ''Paired sampling system,'' we are modifying the definition to provide that a paired sampling system is collocated with respect to sampling time and location. For the definition of ''Quadruplet sampling system,'' we are replacing the term ''Quadruplet'' with ''Quadruplicate'' and adding descriptive text to the definition to provide examples of replicate samples. We are also making companion edits throughout the method text to reflect the change in terminology from ''quadruplet'' to ''quadruplicate.'' Additionally, we are revising the definition of ''surrogate compound'' to clarify that a surrogate compound must be distinguishable from other compounds being measured by the candidate method.

We are also replacing the term ''alternative test method'' with ''candidate test method'' in section 3.2 and throughout Method 301 to maintain consistency when referring to a test method that is subject to the validation procedures specified in Method 301.

Additionally, the EPA is making the following updates and corrections:

- Updating the address for submitting waivers in section 17.2.
- Correcting the t-value for four degrees of freedom in Table 301–3 ''Critical Values of t'' as well as expanding the table to include t-values up to 20 degrees of freedom. We originally proposed expanding the table to only 11 degrees of freedom, but recognized that users may occasionally want to use significantly more than the minimum number of test runs and samples.
- Including a Table 301–4 ''Upper Critical Values of the F Distribution'' and an associated reference in section 18.0 to provide method users with convenient access to the F values needed to perform the required statistical calculations in Method 301. For the same reason that we originally included the Table 301–3 ''Critical Values of t'' in the 2011 revisions to Method 301, we recognized in finalizing the proposed revisions that we should additionally include a table for the F distribution.

## IV. Response to Comment

We received one public comment letter submitted on behalf of the Utility Air Regulatory Group presenting two comments.

*Comment:* The commenter notes that section 6.4.1 of Method 301 requires that the probe tips for each of the paired sampling probes be 2.5 centimeters away from each other with a pitot tube on the outside of each probe and claims that the collocation criteria of Method 301 are infeasible for many currently accepted test methods including Method 30B. The commenter states that if the outside diameter of the validated test method probe is 3 inches (as is common for Method 30B probes), it is impossible for a second probe of equal diameter to meet the probe tip location requirement even if the two probes are immediately adjacent. In addition, the commenter claims that if the sample port being used to perform the validation testing has an inside diameter of 4 inches, a common port size, then two paired sampling probes with an outside diameter of 3 inches cannot physically fit into the sample port making collocation impossible. The commenter notes that sections 6.4.1 and 17.1 provide for some latitude for waivers of the probe placement requirements, but believes the waiver language is inadequate and recommends that EPA provide alternative probe placements that are practically achievable.

*Response:* We recommend that organizations conducting validation testing seek to use 6-inch ports, which are fairly common. Should 6-inch ports not be available at a source where validation testing must be conducted, then they should be installed if practicable. However, we recognize that there still may be instances where the sampling probes requirements are not feasible in a specific situation. Current Method 301 addresses this situation by providing in section 6.4.1 for Administrator approval of a validation request with other paired arrangements for the pitot tube. While we do not agree with the commenter that EPA should provide alternative probe tip and pitot tube placement options within Method 301, we do appreciate that the Administrator approval language provided in the method could confirm additional flexibility with regard to both pitot tube and probe tip placement and we have revised the language of section 6.4.1 and relocated it to section 6.4 to clarify that it is applicable to all aspects of sampling probe/pitot placement.

*Comment:* The commenter points out that section 8.0 of Method 301 specifies the bias of a candidate method as compared to a reference method be no more than 10 percent. The commenter contends this criterion is inadequate and unachievable at low concentrations, which are now more frequently occurring, and recommends that the Method 301 bias criterion be modified to include an alternative performance criterion based on an absolute difference rather than a percent of the measurement to address field validation measurements made at low levels.

*Response:* The EPA disagrees with the commenter that the Method 301 bias criterion should be modified to include an alternative performance criterion based on an absolute difference rather than a percent of the measurement. It is important to understand that the 10 percent bias criterion applies only to candidate methods that will be applied to multiple sources. A candidate method to be applied to a single source is allowed a bias up to 30 percent when coupled with a source-specific bias correction factor if the bias exceeds 10 percent. Though we recognize that emission levels are decreasing, when a candidate method is being validated for broad applicability to multiple sources, there is the opportunity to optimize field validation by conducting testing at sources with relatively higher emissions. As Method 301 is designed for validation of methods for many pollutants emitted from a large range of source categories under many different rules, EPA believes it would, at best, be extremely difficult to specify generic alternative criteria for validation at low levels. Such issues are part of the rationale for the flexibility under section 17.0 of Method 301; with this language EPA maintains the ability to waive some or all the procedures of Method 301 if it can be demonstrated to the Administrator's satisfaction that the bias and precision of a candidate method are suitable for the stated application. To clarify that these provisions apply to all required facets of Method 301, we have revised section 17.2 to include the LOD determination along with bias and precision.

## V. 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 and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this

action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. The revisions in this action to Method 301 do not add information collection requirements, but make corrections and updates to existing testing methodology.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The revisions to Method 301 do not impose any requirements on regulated entities beyond those specified in the current regulations and they do not change any emission standard. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175. This action corrects and updates the existing procedures specified in Method 301. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions 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.

*J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51*

This action involves technical standards. The agency previously identified ASTM D4855–97 (Standard Practice for Comparing Test Methods) as being potentially applicable in previous revisions of Method 301, but determined that the use of ASTM D4855–97 was impractical (section V in 76 FR 28664, May 18, 2011).

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action makes corrections and updates to an existing protocol for assessing the precision and accuracy of alternative test methods to ensure they are comparable to the methods otherwise required; thus, it does not modify or affect the impacts to human health or the environment of any standards for which it may be used.

*L. Congressional Review Act (CRA)*

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

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Alternative test method, EPA Method 301, Field validation, Hazardous air pollutants.

Dated: March 8, 2018.

**E. Scott Pruitt,**

*Administrator.*

For the reasons stated in the preamble, the EPA amends title 40, chapter I of the Code of Federal Regulations as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Appendix A to part 63 is amended by revising Method 301 to read as follows:

## Appendix A to Part 63—Test Methods

**Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media**

Sec.

**Using Method 301**

1.0 What is the purpose of Method 301?
2.0 What approval must I have to use Method 301?
3.0 What does Method 301 include?
4.0 How do I perform Method 301?

**Reference Materials**

5.0 What reference materials must I use?

**Sampling Procedures**

6.0 What sampling procedures must I use?
7.0 How do I ensure sample stability?

**Determination of Bias and Precision**

8.0 What are the requirements for bias?
9.0 What are the requirements for precision?
10.0 What calculations must I perform for isotopic spiking?
11.0 What calculations must I perform for comparison with a validated method?
12.0 What calculations must I perform for analyte spiking?
13.0 How do I conduct tests at similar sources?

**Optional Requirements**

14.0 How do I use and conduct ruggedness testing?
15.0 How do I determine the Limit of Detection for the candidate test method?

**Other Requirements and Information**

16.0 How do I apply for approval to use a candidate test method?
17.0 How do I request a waiver?
18.0 Where can I find additional information?
19.0 Tables.

## Using Method 301

### 1.0 What is the purpose of Method 301?

Method 301 provides a set of procedures for the owner or operator of an affected source to validate a candidate test method as an alternative to a required test method based on established precision and bias criteria.

These validation procedures are applicable under 40 CFR part 63 or 65 when a test method is proposed as an alternative test method to meet an applicable requirement or in the absence of a validated method. Additionally, the validation procedures of Method 301 are appropriate for demonstration of the suitability of alternative test methods under 40 CFR parts 59, 60, and 61. If, under 40 CFR part 63 or 60, you choose to propose a validation method other than Method 301, you must submit and obtain the Administrator's approval for the candidate validation method.

#### 2.0 What approval must I have to use Method 301?

If you want to use a candidate test method to meet requirements in a subpart of 40 CFR part 59, 60, 61, 63, or 65, you must also request approval to use the candidate test method according to the procedures in Section 16 of this method and the appropriate section of the part (§ 59.104, § 59.406, § 60.8(b), § 61.13(h)(1)(ii), § 63.7(f), or § 65.158(a)(2)(iii)). You must receive the Administrator's written approval to use the candidate test method before you use the candidate test method to meet the applicable federal requirements. In some cases, the Administrator may decide to waive the requirement to use Method 301 for a candidate test method to be used to meet a requirement under 40 CFR part 59, 60, 61, 63, or 65 in absence of a validated test method. Section 17 of this method describes the requirements for obtaining a waiver.

#### 3.0 What does Method 301 include?

3.1 *Procedures.* Method 301 includes minimum procedures to determine and document systematic error (bias) and random error (precision) of measured concentrations from exhaust gases, wastewater, sludge, and other media. Bias is established by comparing the results of sampling and analysis against a reference value. Bias may be adjusted on a source-specific basis using a correction factor and data obtained during the validation test. Precision may be determined using a paired sampling system or quadruplicate sampling system for isotopic spiking. A quadruplicate sampling system is required when establishing precision for analyte spiking or when comparing a candidate test method to a validated method. If such procedures have not been established and verified for the candidate test method, Method 301 contains procedures for ensuring sample stability by developing sample storage procedures and limitations and then testing them. Method 301 also includes procedures for ruggedness testing and determining detection limits. The procedures for ruggedness testing and determining detection limits are required for candidate test methods that are to be applied to multiple sources and optional for candidate test methods that are to be applied at a single source.

3.2 *Definitions.*

*Affected source* means an affected source as defined in the relevant part and subpart under Title 40 (*e.g.,* 40 CFR parts 59, 60, 61, 63, and 65).

*Candidate test method* means the sampling and analytical methodology selected for field validation using the procedures described in Method 301. The candidate test method may be an alternative test method under 40 CFR part 59, 60, 61, 63, or 65.

*Paired sampling system* means a sampling system capable of obtaining two replicate samples that are collected as closely as possible in sampling time and sampling location (collocated).

*Quadruplicate sampling system* means a sampling system capable of obtaining four replicate samples (*e.g.,* two pairs of measured data, one pair from each method when comparing a candidate test method against a validated test method, or analyte spiking with two spiked and two unspiked samples) that are collected as close as possible in sampling time and sampling location.

*Surrogate compound* means a compound that serves as a model for the target compound(s) being measured (*i.e.,* similar chemical structure, properties, behavior). The surrogate compound can be distinguished by the candidate test method from the compounds being analyzed.

#### 4.0 How do I perform Method 301?

First, you use a known concentration of an analyte or compare the candidate test method against a validated test method to determine the bias of the candidate test method. Then, you collect multiple, collocated simultaneous samples to determine the precision of the candidate test method. Additional procedures, including validation testing over a broad range of concentrations over an extended time period are used to expand the applicability of a candidate test method to multiple sources. Sections 5.0 through 17.0 of this method describe the procedures in detail.

### Reference Materials

#### 5.0 What reference materials must I use?

You must use reference materials (a material or substance with one or more properties that are sufficiently homogenous to the analyte) that are traceable to a national standards body (*e.g.,* National Institute of Standards and Technology (NIST)) at the level of the applicable emission limitation or standard that the subpart in 40 CFR part 59, 60, 61, 63, or 65 requires. If you want to expand the applicable range of the candidate test method, you must conduct additional test runs using analyte concentrations higher and lower than the applicable emission limitation or the anticipated level of the target analyte. You must obtain information about your analyte according to the procedures in Sections 5.1 through 5.4 of this method.

5.1 *Exhaust Gas Test Concentration.* You must obtain a known concentration of each analyte from an independent source such as a specialty gas manufacturer, specialty chemical company, or chemical laboratory. You must also obtain the manufacturer's certification of traceability, uncertainty, and stability for the analyte concentration.

5.2 *Tests for Other Waste Media.* You must obtain the pure liquid components of each analyte from an independent manufacturer. The manufacturer must certify the purity, traceability, uncertainty, and shelf life of the pure liquid components. You must dilute the pure liquid components in the same type medium or matrix as the waste from the affected source.

5.3 *Surrogate Analytes.* If you demonstrate to the Administrator's satisfaction that a surrogate compound behaves as the analyte does, then you may use surrogate compounds for highly toxic or reactive compounds. A surrogate may be an isotope or compound that contains a unique element (*e.g.,* chlorine) that is not present in the source or a derivation of the toxic or reactive compound if the derivative formation is part of the method's procedure. You may use laboratory experiments or literature data to show behavioral acceptability.

5.4 *Isotopically-Labeled Materials.* Isotope mixtures may contain the isotope and the natural analyte. The concentration of the isotopically-labeled analyte must be more than five times the concentration of the naturally-occurring analyte.

### Sampling Procedures

#### 6.0 What sampling procedures must I use?

You must determine bias and precision by comparison against a validated test method using isotopic spiking or using analyte spiking (or the equivalent). Isotopic spiking can only be

used with candidate test methods capable of measuring multiple isotopes simultaneously such as test methods using mass spectrometry or radiological procedures. You must collect samples according to the requirements specified in Table 301–1 of this method. You must perform the sampling according to the procedures in Sections 6.1 through 6.4 of this method.

6.1 *Isotopic Spiking.* Spike all 12 samples with isotopically-labelled analyte at an analyte mass or concentration level equivalent to the emission limitation or standard specified in the applicable regulation. If there is no applicable emission limitation or standard, spike the analyte at the expected level of the samples. Follow the applicable spiking procedures in Section 6.3 of this method.

6.2 *Analyte Spiking.* In each quadruplicate set, spike half of the samples (two out of the four samples) with the analyte according to the applicable procedure in Section 6.3 of this method. You should spike at an analyte mass or concentration level equivalent to the emission limitation or standard specified in the applicable regulation. If there is no applicable emission limitation or standard, spike the analyte at the expected level of the samples. Follow the applicable spiking procedures in Section 6.3 of this method.

6.3 *Spiking Procedure.*

6.3.1 *Gaseous Analyte with Sorbent or Impinger Sampling Train.* Sample the analyte being spiked (in the laboratory or preferably in the field) at a mass or concentration that is approximately equivalent to the applicable emission limitation or standard (or the expected sample concentration or mass where there is no standard) for the time required by the candidate test method, and then sample the stack gas stream for an equal amount of time. The time for sampling both the analyte and stack gas stream should be equal; however, you must adjust the sampling time to avoid sorbent breakthrough. You may sample the stack gas and the gaseous analyte at the same time. You must introduce the analyte as close to the tip of the sampling probe as possible.

6.3.2 *Gaseous Analyte with Sample Container (Bag or Canister).* Spike the sample containers after completion of each test run with an analyte mass or concentration to yield a concentration approximately equivalent to the applicable emission limitation or standard (or the expected sample concentration or mass where there is no standard). Thus, the final concentration of the analyte in the sample container would be approximately equal to the analyte concentration in the stack gas plus the equivalent of the applicable emission standard (corrected for spike volume). The volume amount of spiked gas must be less than 10 percent of the sample volume of the container.

6.3.3 *Liquid or Solid Analyte with Sorbent or Impinger Trains.* Spike the sampling trains with an amount approximately equivalent to the mass or concentration in the applicable emission limitation or standard (or the expected sample concentration or mass where there is no standard) before sampling the stack gas. If possible, do the spiking in the field. If it is not possible to do the spiking in the field, you must spike the sampling trains in the laboratory.

6.3.4 *Liquid and Solid Analyte with Sample Container (Bag or Canister).* Spike the containers at the completion of each test run with an analyte mass or concentration approximately equivalent to the applicable emission limitation or standard in the subpart (or the expected sample concentration or mass where there is no standard).

6.4 *Probe Placement and Arrangement for Stationary Source Stack or Duct Sampling.* To sample a stationary source, you must place the paired or quadruplicate probes according to the procedures in this subsection. You must place the probe tips in the same horizontal plane. Section 17.1 of Method 301 describes conditions for waivers. For example, the Administrator may approve a validation request where other paired arrangements for the probe tips or pitot tubes (where required) are used.

6.4.1 *Paired Sampling Probes.* For paired sampling probes, the first probe tip should be 2.5 centimeters (cm) from the outside edge of the second probe tip, with a pitot tube on the outside of each probe.

6.4.2 *Quadruplicate Sampling Probes.* For quadruplicate sampling probes, the tips should be in a 6.0 cm × 6.0 cm square area measured from the center line of the opening of the probe tip with a single pitot tube, where required, in the center of the probe tips or two pitot tubes, where required, with their location on either side of the probe tip configuration. Section 17.1 of Method 301 describes conditions for waivers. For example, you must propose an alternative arrangement whenever the cross-sectional area of the probe tip configuration is approximately five percent or more of the stack or duct cross-sectional area.

**7.0 How do I ensure sample stability?**

7.1 *Developing Sample Storage and Threshold Procedures.* If the candidate test method includes well-established procedures supported by experimental data for sample storage and the time within which the collected samples must be analyzed, you must store the samples according to the procedures in the candidate test method and you are not required to conduct the procedures specified in Section 7.2 or 7.3 of this method. If the candidate test method does not include such procedures, your candidate method must include procedures for storing and analyzing samples to ensure sample stability. At a minimum, your proposed procedures must meet the requirements in Section 7.2 or 7.3 of this method. The minimum duration between sample collection and storage must be as soon as possible, but no longer than 72 hours after collection of the sample. The maximum storage duration must not be longer than 2 weeks.

7.2 *Storage and Sampling Procedures for Stack Test Emissions.* You must store and analyze samples of stack test emissions according to Table 301–2 of this method. You may reanalyze the same sample at both the minimum and maximum storage durations for: (1) Samples collected in containers such as bags or canisters that are not subject to dilution or other preparation steps, or (2) impinger samples not subjected to preparation steps that would affect stability of the sample such as extraction or digestion. For candidate test method samples that do not meet either of these criteria, you must analyze one of a pair of replicate samples at the minimum storage duration and the other replicate at the proposed storage duration but no later than 2 weeks of the initial analysis to identify the effect of storage duration on analyte samples. If you are using the isotopic spiking procedure, then you must analyze each sample for the spiked analyte and the native analyte.

7.3 *Storage and Sampling Procedures for Testing Other Waste Media (e.g., Soil/Sediment, Solid Waste, Water/Liquid).* You must analyze one of each pair of replicate samples (half the total samples) at the minimum storage duration and the other replicate (other half of samples) at the maximum storage duration or within 2 weeks of the initial analysis to identify the effect of storage duration on analyte samples. The minimum time period between collection and storage should be as soon as possible, but no longer than 72 hours after collection of the sample.

7.4 *Sample Stability.* After you have conducted sampling and analysis

according to Section 7.2 or 7.3 of this method, compare the results at the minimum and maximum storage durations. Calculate the difference in the results using Equation 301–1.

$$d_i = R_{mini} - R_{maxi} \quad \text{(Eq. 301-1)}$$

Where:

$d_i$ = Difference between the results of the $i^{th}$ replicate pair of samples.

$R_{mini}$ = Results from the $i^{th}$ replicate sample pair at the minimum storage duration.

$R_{maxi}$ = Results from the $i^{th}$ replicate sample pair at the maximum storage duration.

For single samples that can be reanalyzed for sample stability assessment (*e.g.,* bag or canister samples and impinger samples that do not require digestion or extraction), the values for $R_{mini}$ and $R_{maxi}$ will be obtained from the same sample rather than replicate samples.

7.4.1 *Standard Deviation.* Determine the standard deviation of the paired samples using Equation 301–2.

$$SD_d = \sqrt{\frac{\sum_{i}^{n}(d_i - d_m)^2}{n-1}} \quad \text{(Eq. 301-2)}$$

Where:

$SD_d$ = Standard deviation of the differences of the paired samples.

$d_i$ = Difference between the results of the $i^{th}$ replicate pair of samples.

$d_m$ = Mean of the paired sample differences.

n = Total number of paired samples.

7.4.2 *T Test.* Test the difference in the results for statistical significance by calculating the t-statistic and determining if the mean of the differences between the results at the minimum storage duration and the results after the maximum storage duration is significant at the 95 percent confidence level and n–1 degrees of freedom. Calculate the value of the t-statistic using Equation 301–3.

$$t = \frac{|d_m|}{\left(\frac{SD_d}{\sqrt{n}}\right)} \quad \text{(Eq. 301-3)}$$

Where:

$t$ = t-statistic.

$d_m$ = The mean of the paired sample differences.

$SD_d$ = Standard deviation of the differences of the paired samples.

n = Total number of paired samples.

Compare the calculated t-statistic with the critical value of the t-statistic from Table 301–3 of this method. If the calculated t-value is less than the critical value, the difference is not statistically significant. Therefore, the sampling, analysis, and sample storage procedures ensure stability, and you may submit a request for validation of the candidate test method. If the calculated t-value is greater than the critical value, the difference is statistically significant, and you must repeat the procedures in Section 7.2 or 7.3 of this method with new samples using a shorter proposed maximum storage duration or improved handling and storage procedures.

## Determination of Bias and Precision

### 8.0 What are the requirements for bias?

You must determine bias by comparing the results of sampling and analysis using the candidate test method against a reference value. The bias must be no more than ±10 percent for the candidate test method to be considered for application to multiple sources. A candidate test method with a bias greater than ±10 percent and less than or equal to ±30 percent can only be applied on a source-specific basis at the facility at which the validation testing was conducted. In this case, you must use a correction factor for all data collected in the future using the candidate test method. If the bias is more than ±30 percent, the candidate test method is unacceptable.

### 9.0 What are the requirements for precision?

You may use a paired sampling system or a quadruplicate sampling system to establish precision for isotopic spiking. You must use a quadruplicate sampling system to establish precision for analyte spiking or when comparing a candidate test method to a validated method. If you are using analyte spiking or isotopic spiking, the precision, expressed as the relative standard deviation (RSD) of the candidate test method, must be less than or equal to 20 percent. If you are comparing the candidate test method to a validated test method, the candidate test method must be at least as precise as the validated method as determined by an F test (see Section 11.2.2 of this method).

### 10.0 What calculations must I perform for isotopic spiking?

You must analyze the bias, RSD, precision, and data acceptance for isotopic spiking tests according to the provisions in Sections 10.1 through 10.4 of this method.

10.1 *Numerical Bias.* Calculate the numerical value of the bias using the results from the analysis of the isotopic spike in the field samples and the calculated value of the spike according to Equation 301–4.

$$B = S_m - CS \quad \text{(Eq. 301-4)}$$

Where:

B = Bias at the spike level.

$S_m$ = Mean of the measured values of the isotopically-labeled analyte in the samples.

CS = Calculated value of the isotopically-labeled spike level.

10.2 *Standard Deviation.* Calculate the standard deviation of the $S_i$ values according to Equation 301–5.

$$SD = \sqrt{\frac{\sum_{i}^{n} (S_i - S_m)^2}{(n-1)}} \quad \text{(Eq. 301-5)}$$

Where:

SD = Standard deviation of the candidate test method.

$S_i$ = Measured value of the isotopically-labeled analyte in the $i^{th}$ field sample.

$S_m$ = Mean of the measured values of the isotopically-labeled analyte in the samples.

n = Number of isotopically-spiked samples.

10.3 *T Test.* Test the bias for statistical significance by calculating the t-statistic using Equation 301–6. Use the standard deviation determined in Section 10.2 of this method and the numerical bias determined in Section 10.1 of this method.

$$t = \frac{|B|}{\left(\frac{SD}{\sqrt{n}}\right)} \quad \text{(Eq. 301-6)}$$

Where:

t = Calculated t-statistic.

B = Bias at the spike level.

SD = Standard deviation of the candidate test method.

n = Number of isotopically spike samples.

Compare the calculated t-value with the critical value of the two-sided t-distribution at the 95 percent confidence level and n–1 degrees of freedom (see Table 301–3 of this method). When you conduct isotopic spiking according to the procedures specified in Sections 6.1 and 6.3 of this method as required, this critical value is 2.201 for 11 degrees of freedom. If the calculated t-value is less than or equal to the critical value, the bias is not statistically significant, and the bias of the candidate test method is acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant, and you must evaluate the relative magnitude of the bias using Equation 301–7.

$$B_R = \left|\frac{B}{CS}\right| x100\% \quad \text{(Eq. 301-7)}$$

Where:

$B_R$ = Relative bias.

B = Bias at the spike level.

CS = Calculated value of the spike level.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable for use at multiple sources. If the relative bias is greater than 10 percent but less than or equal to 30 percent, and if you correct all data collected with the candidate test method in the future for bias using the source-specific correction factor determined in Equation 301–8, the candidate test method is acceptable only for application to the source at which the validation testing was conducted and may not be applied to any other sites. If either of the preceding two cases applies, you may continue to evaluate the candidate test method by calculating its precision. If not, the candidate test method does not meet the requirements of Method 301.

$$CF = \left(\frac{1}{1 + \frac{B}{CS}}\right) \quad \text{(Eq. 301-8)}$$

Where:

CF = Source-specific bias correction factor.

B = Bias at the spike level.

CS = Calculated value of the spike level.

If the CF is outside the range of 0.70 to 1.30, the data and method are considered unacceptable.

10.4 *Precision.* Calculate the RSD according to Equation 301–9.

$$RSD = \left(\frac{SD}{S_m}\right) x\ 100 \qquad \text{(Eq. 301-9)}$$

Where:

RSD = Relative standard deviation of the candidate test method.

SD = Standard deviation of the candidate test method calculated in Equation 301–5.

$S_m$ = Mean of the measured values of the spike samples.

The data and candidate test method are unacceptable if the RSD is greater than 20 percent.

**11.0 What calculations must I perform for comparison with a validated method?**

If you are comparing a candidate test method to a validated method, then you must analyze the data according to the provisions in this section. If the data from the candidate test method fail either the bias or precision test, the data and the candidate test method are unacceptable. If the Administrator determines that the affected source has highly variable emission rates, the Administrator may require additional precision checks.

11.1 *Bias Analysis.* Test the bias for statistical significance at the 95 percent confidence level by calculating the t-statistic.

11.1.1 *Bias.* Determine the bias, which is defined as the mean of the differences between the candidate test method and the validated method ($d_m$). Calculate $d_i$ according to Equation 301–10.

$$d_i = \frac{(V_{1i} + V_{2i})}{2} - \frac{(P_{1i} + P_{2i})}{2} \qquad \text{(Eq. 301-10)}$$

Where:

$d_i$ = Difference in measured value between the candidate test method and the validated method for each quadruplicate sampling train.

$V_{1i}$ = First measured value with the validated method in the ith quadruplicate sampling train.

$V_{2i}$ = Second measured value with the validated method in the ith quadruplicate sampling train.

$P_{1i}$ = First measured value with the candidate test method in the ith quadruplicate sampling train.

$P_{2i}$ = Second measured value with the candidate test method in the ith quadruplicate sampling train.

Calculate the numerical value of the bias using Equation 301–11.

$$B = \frac{\sum_{i}^{n} d_i}{n} \qquad \text{(Eq. 301-11)}$$

Where:

B = Numerical bias.

$d_i$ = Difference between the candidate test method and the validated method for the ith quadruplicate sampling train.

n = Number of quadruplicate sampling trains.

11.1.2 *Standard Deviation of the Differences.* Calculate the standard deviation of the differences, $SD_d$, using Equation 301–12.

$$SD_d = \sqrt{\frac{\sum_{i}^{n} (d_i - d_m)^2}{(n-1)}} \qquad \text{(Eq. 301-12)}$$

Where:

$SD_d$ = Standard deviation of the differences between the candidate test method and the validated method.

$d_i$ = Difference in measured value between the candidate test method and the validated method for each quadruplicate sampling train.

$d_m$ = Mean of the differences, $d_i$, between the candidate test method and the validated method.

n = Number of quadruplicate sampling trains.

11.1.3 *T Test.* Calculate the t-statistic using Equation 301–13.

$$t = \frac{|d_m|}{\left(\frac{SD}{\sqrt{n}}\right)} \qquad \text{(Eq. 301-13)}$$

Where:

*t* = Calculated t-statistic.

$d_m$ = The mean of the differences, $d_i$, between the candidate test method and the validated method.

$SD_d$ = Standard deviation of the differences between the candidate test method and the validated method.

n = Number of quadruplicate sampling trains.

For the procedure comparing a candidate test method to a validated test method listed in Table 301–1 of this method, n equals six. Compare the calculated t-statistic with the critical value of the t-statistic, and determine if the bias is significant at the 95 percent confidence level (see Table 301–3 of this method). When six runs are conducted, as specified in Table 301–1 of this method, the critical value of the t-statistic is 2.571 for five degrees of freedom. If the calculated t-value is less than or equal to the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant, and you must evaluate the magnitude of the relative bias using Equation 301–14.

$$B_R = \left|\frac{B}{VS}\right| x\ 100\% \qquad \text{(Eq. 301-14)}$$

Where:

$B_R$ = Relative bias.
B = Bias as calculated in Equation 301–11.
VS = Mean of measured values from the validated method.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable. On a source-specific basis, if the relative bias is greater than 10 percent but less than or equal to 30 percent, and if you correct all data collected in the future with the candidate test method for the bias using the correction factor, CF, determined in Equation 301–8 (using VS for CS), the bias of the candidate test method is acceptable for application to the source at which the validation testing was conducted. If either of the preceding two cases applies, you may continue to evaluate the candidate test method by calculating its precision. If not, the candidate test method does not meet the requirements of Method 301.

11.2 *Precision.* Compare the estimated variance (or standard deviation) of the candidate test method to that of the validated test method according to Sections 11.2.1 and 11.2.2 of this method. If a significant difference is determined using the F test, the candidate test method and the results are rejected. If the F test does not show a significant difference, then the candidate test method has acceptable precision.

11.2.1 *Candidate Test Method Variance.* Calculate the estimated variance of the candidate test method according to Equation 301–15.

$$S_p^2 = \frac{\sum_i^n d_i^2}{2n} \qquad \text{(Eq. 301-15)}$$

Where:

$S_p^2$ = Estimated variance of the candidate test method.
$d_i$ = The difference between the $i^{th}$ pair of samples collected with the candidate test method in a single quadruplicate train.
n = Total number of paired samples (quadruplicate trains).

Calculate the estimated variance of the validated test method according to Equation 301–16.

$$S_v^2 = \frac{\sum_i^n d_i^2}{2n} \qquad \text{(Eq. 301-16)}$$

Where:

$S_v^2$ = Estimated variance of the validated test method.
$d_i$ = The difference between the $i^{th}$ pair of samples collected with the validated test method in a single quadruplicate train.
n = Total number of paired samples (quadruplicate trains).

11.2.2 *The F test.* Determine if the estimated variance of the candidate test method is greater than that of the validated method by calculating the F-value using Equation 301–17.

$$F = \frac{S_p^2}{S_v^2} \qquad \text{(Eq. 301-17)}$$

Where:

F = Calculated F value.
$S_p^2$ = The estimated variance of the candidate test method.
$S_v^2$ = The estimated variance of the validated method.

Compare the calculated F value with the one-sided confidence level for F from Table 301–4 of this method. The upper one-sided confidence level of 95 percent for $F_{(6,6)}$ is 4.28 when the procedure specified in Table 301–1 of this method for quadruplicate sampling trains is followed. If the calculated F value is greater than the critical F value, the difference in precision is significant, and the data and the candidate test method are unacceptable.

**12.0 What calculations must I perform for analyte spiking?**

You must analyze the data for analyte spike testing according to this section.

12.1 *Bias Analysis.* Test the bias for statistical significance at the 95 percent confidence level by calculating the t-statistic.

12.1.1 *Bias.* Determine the bias, which is defined as the mean of the differences between the spiked samples and the unspiked samples in each quadruplicate sampling train minus the spiked amount, using Equation 301–18.

$$d_i = \frac{(S_{1i} + S_{2i})}{2} - \frac{(M_{1i} + M_{2i})}{2} - CS \qquad \text{(Eq. 301-18)}$$

Where:

$d_i$ = Difference between the spiked samples and unspiked samples in each quadruplicate sampling train minus the spiked amount.

$S_{1i}$ = Measured value of the first spiked sample in the $i^{th}$ quadruplicate sampling train.

$S_{2i}$ = Measured value of the second spiked sample in the $i^{th}$ quadruplicate sampling train.

$M_{1i}$ = Measured value of the first unspiked sample in the $i^{th}$ quadruplicate sampling train.

$M_{2i}$ = Measured value of the second unspiked sample in the $i^{th}$ quadruplicate sampling train.

CS = Calculated value of the spike level.

Calculate the numerical value of the bias using Equation 301–19.

$$B = \frac{\sum_{i}^{n} d_i}{n} \qquad \text{(Eq. 301-19)}$$

Where:

B = Numerical value of the bias.

$d_i$ = Difference between the spiked samples and unspiked samples in each quadruplicate sampling train minus the spiked amount.

n = Number of quadruplicate sampling trains.

12.1.2 *Standard Deviation of the Differences.* Calculate the standard deviation of the differences using Equation 301–20.

$$SD_d = \sqrt{\frac{\sum_{i}^{n} (d_i - d_m)^2}{n-1}} \qquad \text{(Eq. 301-20)}$$

Where:

$SD_d$ = Standard deviation of the differences of paired samples.

$d_i$ = Difference between the spiked samples and unspiked samples in each quadruplicate sampling train minus the spiked amount.

$d_m$ = The mean of the differences, $d_i$, between the spiked samples and unspiked samples.

n = Total number of quadruplicate sampling trains.

12.1.3 *T Test.* Calculate the t-statistic using Equation 301–21, where n is the total number of test sample differences ($d_i$). For the quadruplicate sampling system procedure in Table 301–1 of this method, n equals six.

$$t = \frac{|d_m|}{\left(\frac{SD_d}{\sqrt{n}}\right)} \qquad \text{(Eq. 301-21)}$$

Where:

t = Calculated t-statistic.

$d_m$ = Mean of the difference, $d_i$, between the spiked samples and unspiked samples.

$SD_d$ = Standard deviation of the differences of paired samples.

n = Number of quadruplicate sampling trains.

Compare the calculated t-statistic with the critical value of the t-statistic, and determine if the bias is significant at the 95 percent confidence level. When six quadruplicate runs are conducted, as specified in Table 301–1 of this method, the 2-sided confidence level critical value is 2.571 for the five degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant and you must evaluate the magnitude of the relative bias using Equation 301–22.

$$B_R = \left|\frac{B}{CS}\right| \times 100\% \qquad \text{(Eq. 301-22)}$$

Where:

$B_R$ = Relative bias.

B = Bias at the spike level from Equation 301–19.

CS = Calculated value at the spike level.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable. On a source-

specific basis, if the relative bias is greater than 10 percent but less than or equal to 30 percent, and if you correct all data collected with the candidate test method in the future for the magnitude of the bias using Equation 301–8, the bias of the candidate test method is acceptable for application to the tested source at which the validation testing was conducted. Proceed to evaluate precision of the candidate test method.

12.2 *Precision.* Calculate the standard deviation using Equation 301–23.

$$SD = \sqrt{\frac{\sum_{i}^{n} (S_i - S_m)^2}{(n-1)}} \qquad \text{(Eq. 301-23)}$$

Where:

SD = Standard deviation of the candidate test method.

$S_i$ = Measured value of the analyte in the $i^{th}$ spiked sample.

$S_m$ = Mean of the measured values of the analyte in all the spiked samples.

n = Number of spiked samples.

Calculate the RSD of the candidate test method using Equation 301–9, where SD and $S_m$ are the values from Equation 301–23. The data and candidate test method are unacceptable if the RSD is greater than 20 percent.

### 13.0 How do I conduct tests at similar sources?

If the Administrator has approved the use of an alternative test method to a test method required in 40 CFR part 59, 60, 61, 63, or 65 for an affected source, and you would like to apply the alternative test method to a similar source, then you must petition the Administrator as described in Section 17.1.1 of this method.

## Optional Requirements

### 14.0 How do I use and conduct ruggedness testing?

Ruggedness testing is an optional requirement for validation of a candidate test method that is intended for the source where the validation testing was conducted. Ruggedness testing is required for validation of a candidate test method intended to be used at multiple sources. If you want to use a validated test method at a concentration that is different from the concentration in the applicable emission limitation under 40 CFR part 59, 60, 61, 63, or 65, or for a source category that is different from the source category that the test method specifies, then you must conduct ruggedness testing according to the procedures in Reference 18.16 of Section 18.0 of this method and submit a request for a waiver for conducting Method 301 at that different source category according to Section 17.1.1 of this method.

Ruggedness testing is a study that can be conducted in the laboratory or the field to determine the sensitivity of a method to parameters such as analyte concentration, sample collection rate, interferent concentration, collection medium temperature, and sample recovery temperature. You conduct ruggedness testing by changing several variables simultaneously instead of changing one variable at a time. For example, you can determine the effect of seven variables in only eight experiments. (W.J. Youden, Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36).

### 15.0 How do I determine the Limit of Detection for the candidate test method?

Determination of the Limit of Detection (LOD) as specified in Sections 15.1 and 15.2 of this method is required for source-specific method validation and validation of a candidate test method intended to be used for multiple sources.

15.1 *Limit of Detection.* The LOD is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero. For this protocol, the LOD is defined as three times the standard deviation, $S_o$, at the blank level.

15.2 *Purpose.* The LOD establishes the lower detection limit of the candidate test method. You must calculate the LOD using the applicable procedures found in Table 301–5 of this method. For candidate test methods that collect the analyte in a sample matrix prior to an analytical measurement, you must determine the LOD using Procedure I in Table 301–5 of this method by calculating a method detection limit (MDL) as described in 40 CFR part 136, appendix B. For the purposes of this section, the LOD is equivalent to the calculated MDL. For radiochemical methods, use the Multi-Agency Radiological Laboratory Analytical Protocols (MARLAP) Manual (*i.e.,* use the minimum detectable concentration (MDC) and not the LOD) available at *https://www.epa.gov/radiation/marlap-manual-and-supporting-documents.*

## Other Requirements and Information

### 16.0 How do I apply for approval to use a candidate test method?

16.1 *Submitting Requests.* You must request to use a candidate test method according to the procedures in § 63.7(f) or similar sections of 40 CFR parts 59, 60, 61, and 65 (§ 59.104, § 59.406, § 60.8(b), § 61.13(h)(1)(ii), or § 65.158(a)(2)(iii)). You cannot use a candidate test method to meet any requirement under these parts until the Administrator has approved your request. The request must include a field validation report containing the information in Section 16.2 of this method. You must submit the request to the Group Leader, Measurement Technology Group, U.S. Environmental Protection Agency, E143–02, Research Triangle Park, NC 27711.

16.2 *Field Validation Report.* The field validation report must contain the information in Sections 16.2.1 through 16.2.8 of this method.

16.2.1 *Regulatory objectives for the testing, including a description of the reasons for the test, applicable emission limits, and a description of the source.*

16.2.2 *Summary of the results and calculations shown in Sections 6.0 through 16.0 of this method, as applicable.*

16.2.3 *Reference material certification and value(s).*

16.2.4 *Discussion of laboratory evaluations.*

16.2.5 *Discussion of field sampling.*

16.2.6 *Discussion of sample preparation and analysis.*

16.2.7 *Storage times of samples (and extracts, if applicable).*

16.2.8 *Reasons for eliminating any results.*

### 17.0 How do I request a waiver?

17.1 *Conditions for Waivers.* If you meet one of the criteria in Section 17.1.1 or 17.1.2 of this method, the Administrator may waive the requirement to use the procedures in this method to validate an alternative or

other candidate test method. In addition, if the EPA currently recognizes an appropriate test method or considers the candidate test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure.

17.1.1 *Similar Sources.* If the alternative or other candidate test method that you want to use was validated for source-specific application at another source and you can demonstrate to the Administrator's satisfaction that your affected source is similar to that validated source, then the Administrator may waive the requirement for you to validate the alternative or other candidate test method. One procedure you may use to demonstrate the applicability of the method to your affected source is to conduct a ruggedness test as described in Section 14.0 of this method.

17.1.2 *Documented Methods.* If the bias, precision, LOD, or ruggedness of the alternative or other candidate test method that you are proposing have been demonstrated through laboratory tests or protocols different from this method, and you can demonstrate to the Administrator's satisfaction that the bias, precision, LOD, or ruggedness apply to your application, then the Administrator may waive the requirement to use this method or to use part of this method.

17.2 *Submitting Applications for Waivers.* You must sign and submit each request for a waiver from the requirements in this method in writing. The request must be submitted to the Group Leader, Measurement Technology Group, U.S. Environmental Protection Agency, E143–02, Research Triangle Park, NC 27711.

17.3 *Information Application for Waiver.* The request for a waiver must contain a thorough description of the candidate test method, the intended application, and results of any validation or other supporting documents. The request for a waiver must contain, at a minimum, the information in Sections 17.3.1 through 17.3.4 of this method. The Administrator may request additional information if necessary to determine whether this method can be waived for a particular application.

17.3.1 *A Clearly Written Test Method.* The candidate test method should be written preferably in the format of 40 CFR part 60, appendix A, Test Methods. Additionally, the candidate test must include an applicability statement, concentration range, precision, bias (accuracy), and minimum and maximum storage durations in which samples must be analyzed.

17.3.2 *Summaries of Previous Validation Tests or Other Supporting Documents.* If you use a different procedure from that described in this method, you must submit documents substantiating the bias and precision values to the Administrator's satisfaction.

17.3.3 *Ruggedness Testing Results.* You must submit results of ruggedness testing conducted according to Section 14.0 of this method, sample stability conducted according to Section 7.0 of this method, and detection limits conducted according to Section 15.0 of this method, as applicable. For example, you would not need to submit ruggedness testing results if you will be using the method at the same affected source and level at which it was validated.

17.3.4 *Applicability Statement and Basis for Waiver Approval.* Discussion of the applicability statement and basis for approval of the waiver. This discussion should address as applicable the following: applicable regulation, emission standards, effluent characteristics, and process operations.

## 18.0 Where can I find additional information?

You can find additional information in the references in Sections 18.1 through 18.18 of this method.


18.1 Albritton, J.R., G.B. Howe, S.B. Tompkins, R.K.M. Jayanty, and C.E. Decker. 1989. Stability of Parts-Per-Million Organic Cylinder Gases and Results of Source Test Analysis Audits, Status Report No. 11. Environmental Protection Agency Contract 68–02–4125. Research Triangle Institute, Research Triangle Park, NC. September.

18.2 ASTM Standard E 1169–89 (current version), ''Standard Guide for Conducting Ruggedness Tests,'' available from ASTM, 100 Barr Harbor Drive, West Conshohoken, PA 19428.

18.3 DeWees, W.G., P.M. Grohse, K.K. Luk, and F.E. Butler. 1989. Laboratory and Field Evaluation of a Methodology for Speciating Nickel Emissions from Stationary Sources. EPA Contract 68–02–4442. Prepared for Atmospheric Research and Environmental Assessment Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. January.

18.4 International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, ICH–Q2A, ''Text on Validation of Analytical Procedures,'' 60 FR 11260 (March 1995).

18.5 International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, ICH–Q2b, ''Validation of Analytical Procedures: Methodology,'' 62 FR 27464 (May 1997).

18.6 Keith, L.H., W. Crummer, J. Deegan Jr., R.A. Libby, J.K. Taylor, and G. Wentler. 1983. Principles of Environmental Analysis. American Chemical Society, Washington, DC.

18.7 Maxwell, E.A. 1974. Estimating variances from one or two measurements on each sample. Amer. Statistician 28:96–97.

18.8 Midgett, M.R. 1977. How EPA Validates NSPS Methodology. Environ. Sci. & Technol. 11(7):655–659.

18.9 Mitchell, W.J., and M.R. Midgett. 1976. Means to evaluate performance of stationary source test methods. Environ. Sci. & Technol. 10:85–88.

18.10 Plackett, R.L., and J.P. Burman. 1946. The design of optimum multifactorial experiments. Biometrika, 33:305.

18.11 Taylor, J.K. 1987. Quality Assurance of Chemical Measurements. Lewis Publishers, Inc., pp. 79–81.

18.12 U.S. Environmental Protection Agency. 1978. Quality Assurance Handbook for Air Pollution Measurement Systems: Volume III. Stationary Source Specific Methods. Publication No. EPA–600/4–77–027b. Office of Research and Development Publications, 26 West St. Clair St., Cincinnati, OH 45268.

18.13 U.S. Environmental Protection Agency. 1981. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials. Publication No. EPA–600/7–81–010. Available from the U.S. EPA, Quality Assurance Division (MD–77), Research Triangle Park, NC 27711.

18.14 U.S. Environmental Protection Agency. 1991. Protocol for The Field Validation of Emission Concentrations from Stationary Sources. Publication No. 450/4–90–015. Available from the U.S. EPA, Emission Measurement Technical Information Center, Technical Support Division (MD–14), Research Triangle Park, NC 27711.

18.15 Wernimont, G.T., ''Use of Statistics to Develop and Evaluate Analytical Methods,'' AOAC, 1111 North 19th Street, Suite 210, Arlington, VA 22209, USA, 78–82 (1987).

18.16 Youden, W.J. Statistical techniques for collaborative tests. In: Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36.

18.17 NIST/SEMATECH (current version), ''e-Handbook of Statistical Methods,'' available from NIST, *http://www.itl.nist.gov/div898/handbook/.*

18.18 Statistical Table, *http://www.math.usask.ca/~szafron/Stats244/f_table_0_05.pdf.*


## 19.0 Tables.

TABLE 301–1—SAMPLING PROCEDURES

| If you are . . . | You must collect . . . |
|---|---|
| Comparing the candidate test method against a validated method | A total of 24 samples using a quadruplicate sampling system (a total of six sets of replicate samples). In each quadruplicate sample set, you must use the validated test method to collect and analyze half of the samples. |
| Using isotopic spiking (can only be used with methods capable of measurement of multiple isotopes simultaneously). | A total of 12 samples, all of which are spiked with isotopically-labeled analyte. You may collect the samples either by obtaining six sets of paired samples or three sets of quadruplicate samples. |
| Using analyte spiking | A total of 24 samples using the quadruplicate sampling system (a total of six sets of replicate samples—two spiked and two unspiked). |

TABLE 301–2—STORAGE AND SAMPLING PROCEDURES FOR STACK TEST EMISSIONS

| If you are . . . | With . . . | Then you must . . . |
|---|---|---|
| Using isotopic or analyte spiking procedures. | Sample container (bag or canister) or impinger sampling systems that are not subject to dilution or other preparation steps. | Analyze six of the samples within 7 days and then analyze the same six samples at the proposed maximum storage duration or 2 weeks after the initial analysis. |
| | Sorbent and impinger sampling systems that require extraction or digestion. | Extract or digest six of the samples within 7 days and extract or digest six other samples at the proposed maximum storage duration or 2 weeks after the first extraction or digestion. Analyze an aliquot of the first six extracts (digestates) within 7 days and proposed maximum storage duration or 2 weeks after the initial analysis. This will allow analysis of extract storage impacts. |
| | Sorbent sampling systems that require thermal desorption. | Analyze six samples within 7 days. Analyze another set of six samples at the proposed maximum storage time or within 2 weeks of the initial analysis. |
| Comparing a candidate test method against a validated test method. | Sample container (bag or canister) or impinger sampling systems that are not subject to dilution or other preparation steps. | Analyze at least six of the candidate test method samples within 7 days and then analyze the same six samples at the proposed maximum storage duration or within 2 weeks of the initial analysis. |
| | Sorbent and impinger sampling systems that require extraction or digestion. | Extract or digest six of the candidate test method samples within 7 days and extract or digest six other samples at the proposed maximum storage duration or within 2 weeks of the first extraction or digestion. Analyze an aliquot of the first six extracts (digestates) within 7 days and an aliquot at the proposed maximum storage durations or within 2 weeks of the initial analysis. This will allow analysis of extract storage impacts. |
| | Sorbent systems that require thermal desorption. | Analyze six samples within 7 days. Analyze another set of six samples at the proposed maximum storage duration or within 2 weeks of the initial analysis. |

TABLE 301–3—CRITICAL VALUES OF t FOR THE TWO-TAILED 95 PERCENT CONFIDENCE LIMIT [1]

| Degrees of freedom | $t_{95}$ |
|---|---|
| 1 | 12.706 |
| 2 | 4.303 |
| 3 | 3.182 |
| 4 | 2.776 |
| 5 | 2.571 |
| 6 | 2.447 |
| 7 | 2.365 |
| 8 | 2.306 |
| 9 | 2.262 |
| 10 | 2.228 |
| 11 | 2.201 |
| 12 | 2.179 |
| 13 | 2.160 |
| 14 | 2.145 |
| 15 | 2.131 |
| 16 | 2.120 |
| 17 | 2.110 |
| 18 | 2.101 |
| 19 | 2.093 |
| 20 | 2.086 |

[1] Adapted from Reference 18.17 in section 18.0.

TABLE 301–4—UPPER CRITICAL VALUES OF THE F DISTRIBUTION FOR THE 95 PERCENT CONFIDENCE LIMIT [1]

| Numerator ($k_1$) and denominator ($k_2$) degrees of freedom | $F\{F>F_{.05}(k_1,k_2)\}$ |
|---|---|
| 1,1 | 161.40 |
| 2,2 | 19.00 |
| 3,3 | 9.28 |
| 4,4 | 6.39 |
| 5,5 | 5.05 |
| 6,6 | 4.28 |
| 7,7 | 3.79 |
| 8,8 | 3.44 |
| 9,9 | 3.18 |
| 10,10 | 2.98 |
| 11,11 | 2.82 |
| 12,12 | 2.69 |
| 13,13 | 2.58 |
| 14,14 | 2.48 |
| 15,15 | 2.40 |
| 16,16 | 2.33 |
| 17,17 | 2.27 |
| 18,18 | 2.22 |
| 19,19 | 2.17 |
| 20,20 | 2.12 |

[1] Adapted from References 18.17 and 18.18 in section 18.0.

TABLE 301–5—PROCEDURES FOR ESTIMATING $S_o$

| | |
|---|---|
| If the estimated LOD ($LOD_1$, expected approximate LOD concentration level) is no more than twice the calculated LOD or an analyte in a sample matrix was collected prior to an analytical measurement, use Procedure I as follows.<br>*Procedure I:*<br>Determine the LOD by calculating a method detection limit (MDL) as described in 40 CFR part 136, appendix B. | If the estimated LOD ($LOD_1$, expected approximate LOD concentration level) is greater than twice the calculated LOD, use Procedure II as follows.<br>*Procedure II:*<br>Prepare two additional standards ($LOD_2$ and $LOD_3$) at concentration levels lower than the standard used in Procedure I ($LOD_1$).<br>Sample and analyze each of these standards ($LOD_2$ and $LOD_3$) at least seven times.<br>Calculate the standard deviation ($S_2$ and $S_3$) for each concentration level.<br>Plot the standard deviations of the three test standards ($S_1$, $S_2$ and $S_3$) as a function of concentration.<br>Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is $S_o$.<br>Calculate the $LOD_0$ (referred to as the calculated LOD) as 3 times $S_o$. |

* * * * *

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**[Docket No. 180202117–8117–01]**

**RIN 0648–BH58**

## Pacific Halibut Fisheries; Catch Sharing Plan

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS is implementing this interim final rule to establish regulations for 2018 Pacific halibut catch limits in the following International Pacific Halibut Commission (IPHC) Regulatory Areas: Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). This interim final rule revises a catch sharing plan (CSP) for guided sport (charter) and commercial individual fishing quota (IFQ) halibut fisheries in Area 2C and Area 3A, revises regulations applicable to the charter halibut fisheries in Area 2C and Area 3A, and revises a CSP for the commercial IFQ and Western Alaska Community Development Quota (CDQ) halibut fisheries in Areas 4C, 4D, and 4E. This action is necessary because the IPHC, at its annual meeting, did not recommend new catch limits or specific CSP allocations and charter management measures for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E for 2018, and the 2017 IPHC regulations are in effect until superseded. This interim final rule is necessary because immediate action is needed to ensure that halibut catch limits, charter halibut fishery management measures, and CSP allocations are in place at the start of the commercial IFQ and CDQ halibut fishery on March 24, 2018, that better protect the declining Pacific halibut resource. This action is intended to enhance the conservation of Pacific halibut and is within the authority of the Secretary of Commerce (Secretary) to establish additional regulations

governing the taking of halibut which are more restrictive than those adopted by the IPHC.

**DATES:** Effective March 19, 2018, through December 31, 2018. Comments must be received by April 19, 2018.

**ADDRESSES:** Submit comments, identified by docket number NOAA–NMFS–2018–0024, by either of the following methods:

- *Electronic Submission:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0024,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the environmental assessment (EA), and the Regulatory Impact Review (RIR), collectively (Analysis), prepared for this interim final rule are available from *http://www.regulations.gov* or from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov.*

Additional requests for information regarding halibut may be obtained by contacting the International Pacific Halibut Commission, 2320 W. Commodore Way, Suite 300, Seattle, WA 98199–1287; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; or Sustainable Fisheries Division.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

## Background

The IPHC can recommend regulations that govern the Pacific halibut fishery, pursuant to the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), Mar. 2, 1953, 5 U.S.T. 5, and the Protocol Amending the Convention Between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Protocol), Mar. 29, 1979, 32 U.S.T. 2483. The IPHC's regulatory areas (Areas) are: Area 2A (California, Oregon, and Washington); Area 2B (British Columbia); Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). These Areas are described at 50 CFR part 679, Figure 15.

Pursuant to the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. On February 26, 2018, the Secretary of State, with the concurrence of the Secretary of Commerce, accepted the 2018 IPHC regulations agreed upon and recommended by the IPHC as provided by the Halibut Act at 16 U.S.C. 773b. Pacific Halibut Fisheries; Catch Sharing Plan, 83 FR 10390, March 9, 2018.

The Halibut Act provides the Secretary of Commerce with general responsibility to carry out the Convention under the Halibut Act (16 U.S.C. 773c(a) and (b)). This general responsibility includes adopting such regulations, in consultation with the U.S. Coast Guard, as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act (16 U.S.C. 773c(b)). The Regional Fishery Management Councils may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters which are in addition to, and not in conflict with, regulations adopted by the IPHC (16 U.S.C. 773c(c)). *Id.;* Protocol, Article 1. Also, the North Pacific Fishery Management Council (NPFMC) has exercised this authority most notably in developing halibut management programs for three fisheries that harvest halibut in Alaska: The subsistence, sport, and commercial fisheries. The Pacific Fishery Management Council (PFMC) has exercised this authority by developing a catch sharing plan governing the allocation of halibut and management of sport fisheries on the U.S. West Coast. *See* 50 CFR part 300 and Pacific Halibut Catch Sharing Plan for Area 2A available on the PFMC website (*http://www.pcouncil.org/wp-content/uploads/2017/02/Final_2017_PACIFIC_HALIBUT_CATCH_SHARING_PLAN_FOR_AREA_2A.pdf*).

Relevant to this interim final rule, the Secretary exercised the authority under Article I of the Convention and 16 U.S.C. 773c(a) and (b) in 1990 to implement regulations on commercial and sport catch limits that were more restrictive than the IPHC regulations published in 1989 because the IPHC, at its annual meeting in 1990, did not approve new management measures for 1990 (62 FR 11929, March 30, 1990). The regulations published in 1989 were in effect until superseded.

Specific to this interim final rule, the Secretary is implementing, under those same authorities, catch limits in Areas: 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, catch sharing plan (CSP) allocations for charter and commercial IFQ halibut fisheries in Area 2C and Area 3A, charter halibut management measures in Areas 2C and 3A, and CSP allocations for the commercial IFQ and CDQ halibut fisheries in Areas 4C, 4D, and 4E that are necessary to carry out the purposes and objectives of the Convention. The Secretary is using an interim final rule because the 2017 IPHC regulations are in effect until superseded and more restrictive management measures to conserve the Pacific halibut resource are needed prior to the March 24, 2018, opening date.

Subsistence and sport halibut fishery regulations for Alaska are codified at 50 CFR part 300. Commercial halibut fisheries in Alaska are subject to the IFQ Program and CDQ Program (50 CFR part 679) regulations, and the area-specific catch sharing plans (CSPs) for Areas 2C, 3A, and Areas 4C, 4D, and 4E.

The NPFMC implemented a CSP among commercial IFQ and CDQ halibut fisheries in IPHC Regulatory Areas 4C, 4D, and 4E (commonly referred to as Area 4CDE, Western Alaska) through rulemaking, and the Secretary of Commerce approved the plan on March 20, 1996 (61 FR 11337). The Area 4 CSP regulations were codified at 50 CFR 300.65, and were amended on March 17, 1998 (63 FR 13000). New annual regulations pertaining to the Area 4 CSP also may be implemented through regulations established by the Secretary that are necessary to carry out the purposes and objectives of the Convention.

The NPFMC recommended and NMFS implemented through rulemaking a CSP for charter and commercial IFQ halibut fisheries in IPHC Regulatory Area 2C and Area 3A on January 13, 2014 (78 FR 75844, December 12, 2013). The Area 2C and

3A CSP regulations are codified at 50 CFR 300.65. The CSP defines an annual process for allocating halibut between the commercial and charter fisheries so that each sector's allocation varies in proportion to halibut abundance, specifies a public process for setting charter fishery management measures, and authorizes limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF).

The IPHC held its annual meeting in Portland, Oregon, from January 22 through 26, 2018, and recommended a number of changes to the 2017 IPHC regulations (82 FR 12730, March 7, 2017). The Secretary of State accepted the annual management measures, including the following changes to the previous IPHC regulations for 2018 pertaining to:

1. New commercial halibut fishery opening and closing dates in Section 9;
2. Revisions to existing regulations to clarify the requirement for commercial halibut to be landed and weighed with the head attached;
3. Modifications that align IPHC regulations to recent NPFMC actions that would allow CDQ groups to lease (receive by transfer) halibut quota share (QS) in Areas 4B, 4C, and 4D;
4. A minor revision to clarify that halibut harvested on a charter vessel fishing trip in Area 2C or Area 3A must be retained on board the vessel on which the halibut was caught until the end of the fishing trip;
5. Addition of language to existing regulations that clarifies the skin-on requirement of halibut that are retained and cut into sections on board a sport fishing vessel;
6. Changes to allow halibut to be taken with pot gear under specific circumstances provided in NMFS regulations;
7. Revisions to the management measures for Area 2C and Area 3A charter halibut anglers that close three Tuesdays to charter halibut fishing. The dates for the 2017 closures are revised to conform to specific dates in 2018; and
8. Minor revisions to standardize terminology and clarify the regulations, including a new table to specify the commercial, sport, and Treaty fishing catch limits for all IPHC regulatory areas.

Pursuant to regulations at 50 CFR 300.62, the 2018 IPHC annual management measures recommended by the IPHC and accepted by the Secretary of State were published in the **Federal Register** to provide notice of their immediate regulatory effectiveness and to inform persons subject to the regulations of their restrictions and requirements (83 FR 10390, March 9, 2018).

At its 2018 annual meeting, the IPHC did not recommend:

1. New catch limits in any IPHC regulatory area;
2. Revised CSP allocations for charter and commercial IFQ halibut fisheries in Area 2C and Area 3A;
3. Revised charter halibut management measures in Areas 2C and 3A; or
4. Revised CSP allocations for the commercial IFQ and CDQ halibut fisheries in Areas 4C, 4D, and 4E.

All of the catch limits, CSP allocations, and charter management measures considered for recommendation by the IPHC in 2018 were intended to reduce the harvest of halibut compared to 2017 because the biological information presented by the IPHC scientists indicated that the spawning biomass, and the biomass available to the halibut fisheries, is projected to decline. The rate of fishing mortality is projected to increase over the next several years if harvests are not reduced relative to 2017.

Although the United States and Canada voiced consensus at the IPHC's January 2018 annual meeting that some reduction in catch limits relative to 2017 in all Areas was appropriate, U.S. and Canadian Commissioners could not agree on specific catch limits for 2018. Therefore, the IPHC did not make a recommendation to the Secretary of State to revise the catch limits that were recommended and implemented in 2017. Because the U.S. and Canadian Commissioners could not reach agreement on the specific catch limits in each Area, the IPHC did not provide specific recommendations to revise the allocations resulting from the CSP for charter and commercial IFQ halibut fisheries in Area 2C and Area 3A, charter halibut management measures in Areas 2C and 3A, or the allocations resulting from the CSP for the commercial IFQ and CDQ halibut fisheries in Areas 4C, 4D, and 4E.

Although the U.S. and Canada could not agree on specific catch limits, the U.S. Commissioners did endorse specific catch limits that would apply to waters off Alaska (Areas 2C through 4), and specific allocations and charter management measures based on the CSPs in place. NMFS, consistent with the authority under the Convention and the Halibut Act, is implementing the catch limits, allocations resulting from the CSPs, and charter management measures endorsed by the U.S. Commissioners for 2018. These measures are intended to meet the conservation and management objectives of the IPHC and the NPFMC. The following sections of this preamble describe the rationale for the catch limits, CSP allocations, and charter management measures being implemented in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E under this interim final rule. The catch limit for Area 2A is being addressed in a separate rule.

**Catch Limits**

In 2017, the IPHC conducted its annual stock assessment using a range of updated data sources as described in detail in the 2018 IPHC Report of Assessment and Research Activities (2018 RARA; available at *www.iphc.int*). The IPHC used an ''ensemble'' of four equally weighted models, comprised of two long time-series models, and two short time-series models that use data series either divided by geographical region (IPHC Regulatory Area) or aggregated into coastwide summaries, to evaluate the Pacific halibut stock. These models incorporate data from the 2017 IPHC survey, the 2017 commercial halibut fishery, the most recent NMFS trawl survey, weight-at-age estimates by region, and age distribution information for bycatch, sport, and sublegal discard removals. As has been the case since 2012, the results of the ensemble models are integrated, and incorporate uncertainty in natural mortality rates, environmental effects on recruitment, and other structural and parameter categories. The data and assessment models used by the IPHC are reviewed by the IPHC's Scientific Review Board comprised of non-IPHC scientists who provide an independent scientific review of the stock assessment data and models and provide recommendations to IPHC staff and to the Commission. The Scientific Review Board did not identify any substantive errors in the data or methods used in the 2017 stock assessment. NMFS believes the IPHC's data and assessments models constitute best available science on the status of the Pacific halibut resource.

The IPHC's data, including the setline survey, indicates that the Pacific halibut stock declined continuously from the late 1990s to around 2010, as a result of decreasing size at a given age (size-at-age), as well as somewhat weaker recruitment strengths than those observed during the 1980s. The biomass of spawning females is estimated to have stabilized near 200,000,000 pounds (90,718 mt) in 2010, and since then the stock is estimated to have increased gradually until 2017.

The 2017 stock assessment projects that the biomass of spawning females at the beginning of 2018 is estimated to be 202,000,000 pounds (91,626 mt). Data

from the 2017 stock assessment indicate that recent recruitments of recent age classes (cohorts) of Pacific halibut are estimated to be smaller than any recruitment from 1999 through 2005. This indicates a high probability of decline in the female spawning stock biomass in future years.

The IPHC presented biological information indicating the effect of a range of different catch limits on the spawning stock biomass and the harvestable yield over the period from 2019 through 2021. Specifically, the IPHC staff provided information describing the potential implications of three alternative catch limits:

- *Alternative 1 (status quo):* Maintain catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, and charter management measures in Areas 2C and 3A equal to those adopted by the IPHC in 2017.
- *Alternative 2 (implemented in this rule):* Reduce catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, and modify charter management measures in Areas 2C and 3A, as endorsed by the U.S. Commissioners but not recommended by the IPHC at the 2018 IPHC Annual Meeting.
- *Alternative 3:* Reduce catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, and modify charter management measures in Areas 2C and 3A consistent with the IPHC's interim management procedure.

The IPHC's interim management procedure (reference fishing intensity of F46% SPR) seeks to maintain the total mortality of halibut across its range from all sources based on a reference level of fishing intensity so that the Spawning Potential Ratio (SPR) is equal to 46 percent. The reference fishing intensity of F46% SPR seeks to allow a level of fishing intensity that is expected to result in approximately 46 percent of the spawning stock biomass per recruit compared to an unfished stock (*i.e.,* no fishing mortality). Lower values indicate higher fishing intensity. Additional information on the status of the halibut resource under these catch limit alternatives is provided in the Analysis (see **ADDRESSES**).

The following sections of this preamble provide a comparison of the relative risk of a decrease in stock abundance, status, or fishery metrics, for a range of alternative catch levels for 2018 under each of these three alternative catch limit scenarios. This comparison assumes that other sources of mortality from bycatch, personal use, sport (not included in CSPs), subsistence, and the rates of discard mortality in the recreational and commercial fisheries are similar to those observed in 2017. This interim final rule refers to halibut catch limits, commercial and charter allocations and removals in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. This terminology is used in this interim final rule to be consistent with the IPHC, which establishes catch limits and calculates mortality in net pounds.

Although this interim final rule addresses catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, this interim final rule describes the impacts on the halibut resource on a coastwide basis, consistent with the current management and known biological distribution of the halibut resource. Because the 2017 catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E comprise the largest portion of catch limits in all Areas (22,620,000 pounds [10,260 mt], or approximately 72 percent of all catch limits), the impact of maintaining 2017 catch levels in these Areas would have a significant impact on the overall condition of the halibut resource.

*Alternative 1: Maintain Catch Levels Equal to Those Adopted by the IPHC in 2017*

In 2017, the IPHC recommended to the governments of Canada and the United States catch limits for 2017 totaling 31,400,000 pounds (14,243 mt). Maintaining catch limits in all Areas, including Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, equal to 2017 would have several short-term and possibly long-term adverse impacts on the halibut resource.

If the 2017 catch limits were applied in all Areas in 2018, the spawning stock biomass is projected to decrease substantially over the next three years (2019 through 2021). Under this harvest alternative there is estimated to be greater than a 99 percent chance that the spawning biomass will be lower in 2019, and a 34 percent chance that it will be more than 5 percent lower than the current level of 202,000,000 pounds (91,626 mt). Under this alternative catch limit, there is a 99 percent chance that the spawning biomass will be lower than the current level in 2021, and an 89 percent chance that it will be more than 5 percent lower than the current level of 202,000,000 pounds (91,626 mt). In 2021, there is a substantial chance (23 percent) that the spawning biomass will decline below the threshold reference point (30 percent of the spawning stock biomass remains) used by the IPHC to indicate stock conditions that would trigger a substantial reduction in the commercial halibut fishery under the interim IPHC management procedure. Overall, the IPHC assessment predicts that the spawning stock biomass would decrease continuously between 2019 and 2021 under this catch limit alternative (see Section 3.3 of the Analysis).

Under this alternative, if the 2017 catch limits were applied in all Areas in 2018, the future fishery yield, using the reference fishing intensity of F46% SPR, is also projected to decrease substantially over the next three years (2019 through 2021). The fishery yield is the amount of harvest available for harvest by commercial, recreational, and subsistence users. The IPHC estimates an 80 percent chance that the coastwide fishery yield will be lower than the status quo of 40,800,000 pounds (18,507 mt) in 2019, and a 76 percent chance that it will be more than 10 percent lower. Under this alternative, the IPHC estimates at least an 81 percent chance that the coastwide fishery yield will be lower than 40,800,000 pounds (18,507 mt) in 2020 and 2021, and at least a 77 percent chance that it will be more than 10 percent lower in 2020 and 2021. This alternative would provide the highest short-term catch limits and the most harvest opportunities for 2018 of the three alternative catch limit scenarios described in this preamble. Sections 3 and 4 of the Analysis summarize the biological and economic impacts of this alternative.

*Alternative 2: Reduce Catch Limits as Endorsed by the U.S. Commissioners But Not Recommended by the IPHC*

After considering the range of stock assessment, commercial fishery, and other biological information at its 2018 annual meeting, the U.S. Commissioners to the IPHC stated that maintaining 2018 catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E at the same level as those implemented in 2017 would not be consistent with its conservation objectives for the halibut stock and its management objectives for the halibut fisheries. Specifically, the Protocol in Article III states that the Commission may limit the quantity of the catch ''for the purpose of developing the stocks of halibut . . . to levels which will permit the optimum yield from that fishery, and of maintaining the stocks at those levels . . .'' The U.S. Commissioners provided rationale that supported the catch limits under this alternative and implemented by this rule, including the following:

- The IPHC survey, IPHC stock assessment, and supporting information from trawl and longline surveys conducted by NMFS indicated substantial reductions in the spawning stock biomass and potential fishery

yield of halibut in 2018 compared to 2017.

• The IPHC stock assessment identified poor recruitment entering in the portion of the halibut stock on which the fishery relies over the foreseeable future and those trends are worsened with higher harvest rates.

• Although the IPHC survey is a ''snapshot'' of the health of the resource, the results from the survey are further substantiated by declining trends in Bering Sea and Gulf of Alaska trawl surveys, and declining trends in commercial fishery weight-per-unit-effort (WPUE) in most areas (Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E). The IPHC survey indicates a 10 percent reduction in survey WPUE, and a 24 percent reduction in survey numbers-per-unit-effort (NPUE) coastwide.

• Since 2010, within Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, the U.S. has consistently been conservative in setting catch limits at, below, or slightly over the reference levels for the Areas that reflected the IPHC interim management.

The U.S. Commissioners considered information indicating that commercial WPUE in some Areas was higher in 2017 relative to 2016. These commercial data have led some fishery participants to suggest that the surveys and IPHC stock assessment do not adequately reflect the abundance of harvestable halibut. The U.S. Commissioners noted that there is no indication that the surveys or assessment are inaccurate to any significant degree and are the best scientific information available for estimating halibut abundance (see Section 3.3 of the Analysis for additional detail).

The U.S. Commissioners noted that establishing catch limits using the reference fishing intensity of F46% SPR would impose significant economic costs on the commercial and charter operators in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E (see Section 3.3 of the Analysis for additional detail). Therefore, the U.S. Commissioners stated their support for catch limits that would effectively result in reducing catch limits by an amount that is an average between the 2017 catch limits and the catch limits using the reference fishing intensity of F46% SPR. The U.S. Commissioners supported this approach to provide some additional harvest opportunities, but noted that the IPHC stock assessment, IPHC survey, and potential risks to the long-term sustainability of the halibut resource do not support larger catch limits.

Overall, the catch limits supported by the U.S. Commissioners in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E would result in moderate decreases relative to 2017 consistent with the best scientific information available on the abundance of harvestable halibut within these Areas. Under this alternative, catch limits correspond to a projected fishing intensity of F41% SPR, which would represent a slight decrease in fishing intensity from the value for 2017 of F40% SPR estimated prior to the start of fishing in 2017, and less fishing intensity than Alternative 1 (F38%) estimated after the end of fishing in 2017.

As shown in Table 1, in some Areas (*e.g.,* Area 4A) the catch limit reductions from 2017 to 2018 are relatively small because the IPHC survey indicates that the biomass in those Areas in 2017 decreased by only a small proportion. Therefore, the relatively small reduction in those Areas reflects the relatively small decrease in the survey estimate. In other Areas (*e.g.,* Area 3B) the IPHC survey indicates that the biomass in 2017 decreased by a larger proportion. Table 1 summarizes the change in catch limits in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E from 2017 to 2018 under this alternative implemented by this interim final rule.

TABLE 1—PERCENT CHANGE IN CATCH LIMITS FROM 2017 TO 2018 IN AREAS 2C, 3A, 3B, 4A, 4B, 4C, 4D, AND 4E UNDER ALTERNATIVE 2

| Area | 2017 catch limit (pounds) | 2018 catch limit implemented under alternative 2 (pounds) | Change from 2017 (percent) |
|---|---|---|---|
| 2C | 5,250,000 | 4,450,000 | −15.2 |
| 3A | 10,000,000 | 9,450,000 | −5.5 |
| 3B | 3,140,000 | 2,620,000 | −16.6 |
| 4A | 1,390,000 | 1,370,000 | −1.4 |
| 4B | 1,140,000 | 1,050,000 | −7.9 |
| 4CDE | 1,700,000 | 1,580,000 | −7.1 |
| Total (2C–4) | 22,620,000 | 20,520,000 | −9.3 |

Table 1 shows the combined commercial and charter allocations for Area 2C and Area 3A under the CSP. This value includes allocations to the charter sector, including charter fishing incidental mortality, and an amount for the combined commercial landings and discard mortality. The 2018 commercial catch limits after deducting discard mortality are 3,570,000 pounds (1,619 mt) in Area 2C and 7,350,000 pounds (3,334 mt) in Area 3A.

If the 2018 catch limits endorsed by U.S. Commissioners for Areas 2A, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E and the 2018 catch limit endorsed by the Canadian Commissioners for 2B were applied in 2018, the spawning stock biomass is still projected to decrease substantially over the next three years (2019 through 2021). Under this harvest alternative, there is an estimated 93 percent chance that the spawning biomass will be lower than the current level in 2019, and a 19 percent chance that it will be more than 5 percent lower than the current level of 202,000,000 pounds (91,626 mt). Under this alternative catch limit, there is a 92 percent chance that the spawning biomass will be lower in 2021, and a 72 percent chance that it will be more than 5 percent lower than the current level of 202,000,000 pounds (91,626 mt). In 2021, there is a chance (17 percent) that the spawning biomass will decline below the threshold reference point (30 percent of the spawning stock biomass remains) used by the IPHC to indicate stock conditions that would trigger a substantial reduction in the commercial halibut fishery under the interim management procedure. Overall, the IPHC assessment predicts that the spawning stock biomass would decrease

continuously between 2019 and 2021 under this catch limit alternative (see Section 3.3 of the Analysis).

Under this alternative, if 2018 catch limits endorsed by U.S. Commissioners were applied in all Areas in 2018, the future fishery yield, using the reference fishing intensity of F46% SPR, is projected to decrease substantially over the next three years (2019 through 2021), but less so than Alternative 1. The IPHC estimates a 73 percent chance that the coastwide fishery yield will be lower than a coastwide fishery yield of 37,200,000 pounds (16,874 mt) in 2019, and a 63 percent chance that it will be more than 10 percent lower. Under this alternative, the IPHC estimates at least a 75 percent chance that the coastwide fishery yield will be lower than 37,200,000 pounds (16,874 mt) in 2020 and 2021, and at least a 67 percent chance that it will be more than 10 percent lower in 2020 and 2021. Sections 3 and 4 of the Analysis summarize the biological and economic impacts of this alternative.

*Alternative 3: Reduce Catch Limits Consistent With the IPHC's Interim Management Procedure*

The U.S. and Canadian Commissioners also considered an alternative catch limit that would establish catch limits in all regulatory areas consistent with the IPHC's interim management procedure. Neither the U.S. nor the Canadian Commissioners recommended catch limits that were consistent with the IPHC's interim management procedure. As described in the previous section of this preamble, the U.S. Commissioners observed that establishing catch limits using the reference fishing intensity of F46% SPR would impose significant economic costs on commercial and charter operators in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E (see Section 4 of the Analysis for additional detail).

If the catch limits consistent with the IPHC's interim management procedure were implemented in all Areas in 2018, the spawning stock biomass is still projected to decrease over the next three years (2019 through 2021), but less than under Alternatives 1 and 2. Under this harvest alternative, there is an estimated 78 percent chance that the spawning biomass will be lower than the current level in 2019, and a 5 percent chance that it will be more than 5 percent lower than the current level of 202,000,000 pounds (91,626 mt). Under this alternative catch limit, there is a 76 percent chance that the spawning biomass will be lower than the current level in 2021, and a 46 percent chance that it will be more than 5 percent lower than the current level of 202,000,000 pounds (91,626 mt). In 2021, there is a chance (10 percent) that the spawning biomass will decline below the threshold reference point (30 percent of the spawning stock biomass remains) used by the IPHC to indicate stock conditions that would trigger a substantial reduction in the commercial halibut fishery under the interim management procedure. Overall, the IPHC assessment predicts that the spawning stock biomass would decrease continuously between 2019 and 2021 under this catch limit alternative (see Section 3.3 of the Analysis).

Under this alternative, if 2018 catch limits consistent with the IPHC's interim management procedure were applied in all Areas in 2018, the future fishery yield, using the reference fishing intensity of F46% SPR, is projected to decrease substantially over the next three years (2019 through 2021), but less so than Alternatives 1 and 2. The IPHC estimates a 55 percent chance that the coastwide fishery yield will be lower than 31,000,000 pounds (14,061 mt) in 2019, and a 38 percent chance that it will be more than 10 percent lower. Under this alternative, the IPHC estimates at least a 59 percent chance that the fishery yield will be lower than a coastwide fishery yield of 31,000,000 pounds (14,061 mt) in 2020 and 2021, and at least a 45 percent chance that it will be more than 10 percent lower in 2020 and 2021. Sections 3 and 4 of the Analysis summarize the biological and economic impacts of this alternative.

**Catch Limits for Areas 2C, 3A, 4A, 4B, 4C, 4D, and 4E Implemented Under This Rule**

After considering the best available scientific information, the Convention, the status of the halibut resource, and the potential social and economic costs of the three alternative catch limits described in this preamble, NMFS implements through this interim final rule catch limits that are consistent with catch limits endorsed by the U.S. Commissioners but not recommended by the IPHC (Alternative 2).

This interim final rule adds a new provision at 50 CFR 300.68(a)(1) to implement catch limits for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E in 2018. Consistent with the authority under the Convention and the Halibut Act, the regulations implemented at § 300.68(a)(1) under this interim final rule supersede the allocations for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E that are described in section 12 of the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018).

**Catch Sharing Plan for Area 2C and Area 3A Implemented Under This Rule**

In 2014, NMFS implemented a CSP for Area 2C and Area 3A. The CSP defines an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, and establishes allocations for each fishery. To allow flexibility for individual commercial and charter fishery participants, the CSP also authorizes annual transfers of commercial halibut IFQ as GAF to charter halibut permit holders for harvest in the charter fishery. Under the CSP, the IPHC recommends combined catch limits (CCLs) for the charter and commercial halibut fisheries in Area 2C and Area 3A. Each CCL includes estimates of discard mortality (wastage) for each fishery. The CSP was implemented to achieve the halibut fishery management goals of the NPFMC. More information is provided in the final rule implementing the CSP (78 FR 75844, December 12, 2013). Implementing regulations for the CSP are at 50 CFR 300.65. The Area 2C and Area 3A CSP allocation tables are located in Tables 1 through 4 of subpart E of 50 CFR part 300. Based on the catch limit implemented by this interim final rule, the CCL for Area 2C would be 4,450,000 pounds (2,018 mt). Following the CSP allocations in Tables 1 and 3 of subpart E of 50 CFR part 300, the charter fishery is allocated 810,000 pounds (367 mt) of the CCL and the remainder of the CCL, 3,640,000 pounds (1,6518 mt), is allocated to the commercial fishery. Discard mortality of halibut over 26 inches in length (termed ''wastage'' in the CSP) in the amount of 70,000 pounds (32 mt) was deducted from the commercial allocation to obtain the commercial catch limit of 3,570,000 pounds (1,619 mt). Relative to 2017, the commercial allocation decreased by about 695,000 pounds (315 mt) or 16.0 percent, from the 2017 allocation of 4,335,000 pounds (1,966 mt) (including discard mortality). The charter allocation for 2018 is about 810,000 pounds (367 mt), or 11.5 percent less than the charter sector allocation of 915,000 pounds (415 mt) in 2017.

Based on the catch limit implemented by this interim final rule, the CCL for Area 3A is 9,450,000 pounds (4,826 mt). Following the CSP allocations in Tables 2 and 4 of subpart E of 50 CFR part 300, the charter fishery is allocated 1,790,000 pounds (812 mt) of the CCL and the remainder of the CCL, 7,670,000 pounds (3,479 mt), is allocated to the commercial fishery. Discard mortality in the amount of 320,000 pounds (145 mt) was deducted from the commercial

allocation to obtain the commercial catch limit of 7,350,000 pounds (3,334 mt). The commercial allocation decreased by about 450,000 pounds (204 mt) or 5.5 percent, from the 2017 allocation of 8,110,000 pounds (3,679 mt) (including discard mortality). The charter allocation decreased by about 100,000 pounds (45 mt), or 5.6 percent, from the 2017 allocation of 1,890,000 pounds (857 mt).

This interim final rule adds a new provision at 50 CFR 300.68(a)(2) to implement the catch sharing plan for Areas 2C and 3A in 2018. Consistent with the authority under the Convention and the Halibut Act, the regulations implemented at § 300.68(a)(2) under this interim final rule supersede the commercial and charter fishery allocations for Area 2C and Area 3A that are described in sections 29(2)(a) and 29(3)(a) of the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018).

**Charter Halibut Management Measures for Area 2C and Area 3A Implemented Under This Rule**

Guided (charter) recreational halibut anglers are managed under different regulations than unguided recreational halibut anglers in Areas 2C and 3A in Alaska. According to Federal regulations at 50 CFR 300.61, a charter vessel angler means a person, paying or non-paying, receiving sport fishing guide services for halibut. Sport fishing guide services means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. A charter vessel fishing trip is the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel. The charter fishery regulations described below apply only to charter vessel anglers receiving sport fishing guide services during a charter vessel fishing trip for halibut in Area 2C or Area 3A. These regulations do not apply to GAF halibut as specified in section 29(1)(g) of the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018) and described in § 300.65(c)(5), unguided recreational anglers in any regulatory area in Alaska, or guided anglers in areas other than Areas 2C and 3A.

The NPFMC formed the Charter Halibut Management Committee to provide it with recommendations for annual management measures intended to limit charter harvest to the charter catch limit while minimizing negative economic impacts to charter fishery participants in times of low halibut abundance. The committee is composed of representatives from the charter fishing industry in Areas 2C and 3A. The committee considered previously analyzed alternatives and endorsed new alternative measures to be analyzed in October 2017. After reviewing an analysis of the effects of the alternative measures on estimated charter removals, the committee made recommendations for preferred 2018 management measures to the NPFMC. The NPFMC considered the recommendations of the committee, its industry advisory body, and public testimony to develop its recommendation to the IPHC. The NPFMC has used this process to select and recommend annual management measures to the IPHC since 2012.

This interim final rule implements management measures that are consistent with NPFMC policies and regulations that allocate the Pacific halibut resource among fishermen in and off Alaska to support the NPFMC's goals of limiting charter harvests to the sector's allocation under the CSP. Based on the catch limits implemented by this interim final rule, specific charter management measures would need to be revised to limit the Area 2C and Area 3A charter halibut fisheries to their charter catch limits under the CSP. These revisions achieve the overall conservation objective to limit total halibut harvests to established catch limits, and to meet the NPFMC's allocation objectives for these areas. The management measures discussed below would meet these objectives. All other charter management measures are described in the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018).

*Revised Management Measures for Charter Vessel Fishing in Area 2C—Reverse Slot Limit*

This interim final rule implements a reverse slot limit which is in addition to, and not in conflict with regulations adopted by the IPHC in section 29(2)(c) in the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018). This interim final rule implements a reverse slot limit that prohibits a person on board a charter vessel referred to in 50 CFR 300.65 and fishing in Area 2C from taking or possessing any halibut, with head on, that is greater than 38 inches (96.5 cm) and less than 80 inches (203.2 cm), as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail. The 2017 reverse slot limit prohibited retention by charter vessel anglers of halibut that were greater than 44 inches (111.8 cm) and less than 80 inches. The projected charter removal under the 2018 recommended reverse slot limit is 809,000 pounds (367 mt), 1,000 pounds (0.45 mt) below the charter allocation.

This interim final rule adds a new provision at 50 CFR 300.68(b)(1) to establish this reverse slot limit in Area 2C. Consistent with the authority under the Convention and the Halibut Act, the regulations implemented at § 300.68(b)(1) under this interim final rule supersede the reverse slot limit for charter vessels fishing in Area 2C that is described in section 29(2)(c) of the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018).

*Management Measures for Charter Vessel Fishing in Area 3A—Day-of-Week Closures*

The NPFMC recommended using day-of-week closures for Area 3A in 2018. This interim final rule establishes day-of-week closures that are consistent with the NPFMC recommendation and which are in addition to, and not in conflict with regulations adopted by the IPHC in section 29(3)(f) of the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018). This interim final rule does not modify the day of week closures under 2018 IPHC annual management measures (83 FR 10390, March 9, 2018) that prohibits retention of halibut by charter vessel anglers in Area 3A on Wednesdays. This interim final rule establishes day-of-week closures on the following Tuesdays in 2018: July 10, July 17, July 24, July 31, August 7, and August 14. These closures supersede the day-of-week closures listed in the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018). Consistent with the existing Wednesday closure, no retention of halibut by charter vessel anglers is allowed on these dates in Area 3A. Retention of only GAF halibut will be allowed on charter vessels on Wednesdays and the six closed Tuesdays; all other halibut that are caught while fishing on a charter vessel must be released. This interim final rule adds three Tuesday closures that are not listed in the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018). The addition of the three Tuesday closures for 2018 is expected to reduce charter halibut harvest below the charter catch limit. The projected charter removal under the 2018 management measures is 1,777,000

pounds (806 mt), 13,000 pounds (6 mt) below the charter allocation.

This interim final rule adds a new provision at 50 CFR 300.68(b)(2) to establish these new Tuesday closures in Area 3A. Consistent with the authority under the Convention and the Halibut Act, the regulations implemented at § 300.68(b)(2) under this interim final rule supersede the Tuesday closures for charter vessels fishing in Area 3A that is described in section 29(3)(f) of the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018).

**Catch Sharing Plan for Areas 4CDE Implemented Under This Rule**

The allocation to Areas 4CDE that is based on the CSP adopted by the NPFMC as described in this preamble, and the allocation to Areas 4CDE is contained in the table in the regulations at 50 CFR 300.68(a)(1).

**Classification**

The Administrator, Alaska Region, NMFS, determined that this interim final rule is necessary for the conservation and management of the Pacific halibut fishery and that it is consistent with the Convention, the Halibut Act, and other applicable laws. Halibut annual management measures are a product of an agreement between the United States and Canada and are published in the **Federal Register** to provide notice of their effectiveness and content. However, for 2018, because the United States and Canada were not able to reach agreement on all management measures, additional halibut annual management measures will be promulgated by the Secretary of Commerce pursuant to section 4 of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c(a) and (b).

This interim final rule is consistent with the objective of the Convention to develop the stocks of halibut of the Northern Pacific Ocean and Bering Sea to levels which will permit the optimum yield from that fishery, and to maintain the stocks at those levels. NMFS and the U.S. Commissioners considered the best available science when endorsing the catch limits and other management measures implemented by this interim final rule. Specifically, NMFS and the U.S. Commissioners considered the most recent stock assessments conducted by the IPHC, surveys, and the Analysis conducted for this interim final rule.

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Without adoption of this interim final rule, the Pacific halibut stocks will be harvested at a rate NMFS and the U.S. Commissioners have determined to be unacceptably high based on the best available science. Further, it is imperative to publish these regulations prior to the opening of the season under the 2018 IPHC annual management measures (83 FR 10390, March 9, 2018) to avoid confusion to affected public regarding legal behavior while conducting Pacific halibut fisheries in Convention waters off the U.S. Therefore, pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Because of the timing of the start of the Pacific halibut fishery, which begins on March 24, 2018, it is impracticable to complete rulemaking before the start of the fishery with a public review and comment period. This interim final rule implements commercial catch limits and charter halibut management measures consistent with the endorsements made by U.S. Commissioners to the IPHC at the annual meeting of the IPHC that concluded on January 26, 2018. With the fishery scheduled to open on March 24, 2018, NMFS must ensure that the prosecution of a fishery would not result in substantial harm to the Pacific halibut resource that could occur if the additional time necessary to provide for prior notice and comment and agency processing delayed the effectiveness of this action beyond March 24, 2018.

There also is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. These management measures must be effective by March 24, 2018, when the Pacific halibut fishery is scheduled to open by regulations adopted by the IPHC. These management measures are necessary to prevent substantial harm to the Pacific halibut resource. The immediate effectiveness of these regulations avoids confusion to the affected public that could occur if these management measures are not effective on March 24, 2018. Accordingly, it is impracticable to delay for 30 days the effective date of this rule. Therefore, good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(b)(3), and to make the rule effective upon filing for public inspection with the Office of the Federal Register.

Although we are waiving prior notice and opportunity for public comment, we are requesting post-promulgation comments until April 19, 2018. Please see **ADDRESSES** for more information on the ways to submit comments.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

**List of Subjects in 50 CFR Part 300**

Alaska, Fisheries, Treaties.

Dated: March 15, 2018.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for subpart E continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

■ 2. Add § 300.68 to subpart E to read as follows:

**§ 300.68 2018 Management Measures for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.**

Notwithstanding § 300.65(c)(2), (c)(3)(i), and (c)(4)(i), this section establishes catch limits for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, catch sharing plan allocations for Areas 2C and 3A, Catch Sharing Plan allocations for Areas 4C, 4D, and 4E, and charter halibut management measures for Areas 2C and 3A effective March 19, 2018, through December 31, 2018.

(a) *Catch limits for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E in 2018*—(1) *Commercial catch limits.* The total allowable commercial catch of halibut to be taken during the commercial halibut fishing periods specified by the Commission shall be limited in net weights expressed in pounds and metric tons shown in the following table:

| IPHC regulatory area | Commercial catch limit—net weight | |
|---|---|---|
| | Pounds | Metric tons |
| 2C | 3,570,000 | 1,619.32 |
| 3A | 7,350,000 | 3,333.91 |
| 3B | 2,620,000 | 1,188.41 |
| 4A | 1,370,000 | 621.42 |
| 4B | 1,050,000 | 476.27 |
| 4C | 733,500 | 332.71 |
| 4D | 733,500 | 332.71 |
| 4E | 113,000 | 51.26 |

(2) *Annual guided sport catch limits in Area 2C and Area 3A.* The annual guided sport catch limit:

(i) In Area 2C is 810,000 pounds (367.41 metric tons); and

(ii) In Area 3A is 1,790,000 pounds (811.93 metric tons).

(3) *Annual commercial catch limits in Area 2C and Area 3A.* The annual commercial catch limit:

(i) In Area 2C is 3,570,000 pounds (1,619.32 metric tons); and

(ii) In Area 3A is 7,350,000 pounds (3,333.91 metric tons).

(b) *Additional requirements for charter vessels for Area 2C and Area 3A in 2018*—(1) *Area 2C.* In addition to complying with regulations adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62, no person on board a charter vessel as defined in § 300.61 shall catch and retain any halibut that with head on is greater than 38 inches (96.5 cm) and less than 80 inches (203.2 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail.

(2) *Area 3A.* In addition to complying with regulations adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62, no person on board a charter vessel as defined in § 300.61 may catch and retain halibut on any Wednesday in 2018, or on the following Tuesdays: July 10, July 17, July 24, July 31, August 7, and August 14 in 2018.

[FR Doc. 2018–05623 Filed 3–19–18; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 150121066–5717–02]**

**RIN 0648–XG099**

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; closure of Angling category southern area trophy fishery.

**SUMMARY:** NMFS closes the southern area Angling category fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches curved fork length or greater)) Atlantic bluefin tuna (BFT). This action is being taken to prevent overharvest of the Angling category southern area trophy BFT subquota.

**DATES:** Effective 11:30 p.m., local time, March 17, 2018 through December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

### Angling Category Large Medium and Giant Southern ''Trophy'' Fishery Closure

The 2018 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2018. The Angling category season opened January 1, 2018, and continues through December 31, 2018. The currently codified Angling category quota is 195.2 metric tons (mt), of which 4.5 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.5 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Based on reported landings from the NMFS Automated Catch Reporting System and the North Carolina Tagging Program, NMFS has determined that the codified Angling category southern area trophy BFT subquota has been reached and that a closure of the southern area trophy BFT fishery is warranted. Therefore, retaining, possessing, or landing large medium or giant BFT south of 39°18′ N lat. and outside the Gulf of Mexico by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on March 17, 2018. This closure will remain effective through December 31, 2018. This action is intended to prevent overharvest of the Angling category southern area trophy BFT subquota, and is taken consistent with the regulations at § 635.28(a)(1).

NMFS has considered the fact that it is in the process of proposing a rule that would implement and give effect to the 2017 ICCAT recommendation on western Atlantic BFT management, which increased the annual U.S. BFT quota for 2018, 2019, and 2020 by 17.5 percent from the 2017 level. The domestic subquotas that would result from the proposed action would include an increase in the southern trophy BFT quota from the currently codified 1.5 mt to 1.8 mt. However, because current landings exceed both the currently codified and the anticipated proposed quota for the Angling category southern area, closure of the southern area trophy BFT fishery needs to occur regardless of the proposed increase.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches and any further Angling category adjustments, is available at *hmspermits.noaa.gov* or by calling (978) 281–9260. HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure.*

HMS Charter/Headboat and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by

accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting App.

**Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the southern area Angling category trophy fishery is necessary to prevent any further overharvest of the southern area trophy fishery subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery before additional landings of these sizes of BFT occur. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.28(a)(1), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 15, 2018.

**Emily H. Menashes,**

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

[FR Doc. 2018–05604 Filed 3–15–18; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 83, No. 54
Tuesday, March 20, 2018

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

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 117 and 507

**[Docket No. FDA–2018–D–0671]**

## Determining the Number of Employees for Purposes of the "Small Business" Definition in Parts 117 and 507: Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a draft guidance for industry describing the Agency's current thinking on how to determine the number of employees for purposes of the ''small business'' definition in the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for human and animal food rules. The draft guidance, when finalized, will help industry subject to those rules determine the number of employees for purposes of the ''small business'' definition.

**DATES:** Submit either electronic or written comments on the draft guidance by May 21, 2018 to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–D–0671 for ''Determining the Number of Employees for Purposes of the 'Small Business' Definition in Parts 117 and 507: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** *For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Human Food:* Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

*For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals:* Jeanette Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish

Pl., Rockville, MD 20855, 240–402–6246.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a draft guidance for industry entitled ''Determining the Number of Employees for Purposes of the 'Small Business' Definition in Parts 117 and 507: Guidance for Industry.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

This draft guidance concerns two regulations that we have established in Title 21 of the Code of Federal Regulations (21 CFR) as part of our implementation of the FDA Food Safety Modernization Act (Pub. L. 111–353). These two regulations are 21 CFR part 117 (part 117) (published in the **Federal Register** on September 17, 2015, 80 FR 55907) and 21 CFR part 507 (part 507) (published in the **Federal Register** on September 17, 2015, 80 FR 56170). Under parts 117 and 507, whether a business is a ''small business'' has two main implications. First, certain small businesses are exempt from the human food preventive controls requirements and the animal food preventive controls requirements if they are engaged only in specified low-risk activity/food combinations. Second, small businesses have later compliance dates for parts 117 and 507 than larger businesses. This guidance will provide additional information to assist businesses in determining their status as a ''small business.''

## II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: March 15, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–05705 Filed 3–19–18; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 147**

**[Docket Number USCG–2017–0446]**

**RIN 1625–AA00**

# Safety Zone; Appomattox FPS, Mississippi Canyon 437, Outer Continental Shelf on the Gulf of Mexico

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone around the Appomattox Floating Production System (FPS) facility located in Mississippi Canyon Block 437 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Placing a safety zone around the facility will significantly reduce the threat of allisions, collisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 19, 2018.

**ADDRESSES:** You may submit comments identified by docket number USCG–2017–0446 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Ms. Laura Knoll, U.S. Coast Guard, District Eight Waterways Management Branch; telephone 504–671–2139, *laura.b.knoll@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FPS Floating production system
FR Federal Register
NPRM Notice of proposed rulemaking
OCS Outer Continental Shelf
§ Section
U.S.C. United States Code

## II. Background, Purpose, and Legal Basis

Under the authority provided in 14 U.S.C. 85, 43 U.S.C. 1333, and Department of Homeland Security Delegation No. 0170.1(90), Title 33, CFR 147.1, 147.5, and 147.10 permit the establishment of safety zones for facilities located on the Outer Continental Shelf (OCS) for the purpose of protecting life and property on the facilities, their appurtenances and attending vessels, and on the adjacent waters within the safety zones.

The safety zone proposed by this rulemaking is on the OCS in the deepwater area of the Gulf of Mexico at Mississippi Canyon Block 437. The area for the safety zone would be 500 meters (1640.4 feet) from each point on the facility, which is located at 28°34′25.47″ N, 87°56′03.11″ W. The deepwater area would be considered to be waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. The deepwater area would also include an extensive system of fairways. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessels. The establishment of this safety zone will not interfere with these vessels' navigation in the area.

## III. Discussion of Proposed Rule

Shell Exploration and Production Co. requested that an OCS safety zone extending 500 meters from each point on the Appomattox Floating Production System (FPS) facility structure's outermost edge be established. There are safety concerns for both the personnel aboard the facility and the environment. The District Commander has determined that it was highly likely that any allision with the facility would result in a catastrophic event. Placing a safety zone around the facility will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the living marine resources.

In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to (1) the level of the existing and foreseeable shipping activity, the presence of unusually harmful or hazardous substances and obstructions within 500 meters of the

facility, (2) safety concerns for personnel aboard the facility, (3) concerns for the environment, (4) the likelihood that an allision would result in a catastrophic event based on the proximity to shipping fairways, offloading operations, production levels, and size of the crew, (5) the volume of traffic in the vicinity of the proposed safety zone, (6) the types of vessels navigating in the vicinity of the proposed area, and (7) the structural configuration of the facility.

Results from a thorough and comprehensive examination of the criteria, International Maritime Organization (IMO)'s guidelines, and existing regulations, warrant the establishment of a safety zone of 500 meters around the facility. The proposed safety zone would significantly reduce the threat of allisions, oil spills, and releases of natural gas, and increase the safety of life, property, and the environment in the Gulf of Mexico by prohibiting entry into the zone. Only vessels measuring less than 100 feet in length overall and not engaged in towing, attending vessels as defined in 33 CFR 147.20, or those vessels specifically authorized by the Eighth Coast Guard District Commander or a designated representative would be permitted to enter the proposed safety zone.

## IV. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the safety zone's location and its distance from both land and safety fairways. This proposed rule is not a significant regulatory action due to the location of the Appomattox FPS, on the Outer Continental Shelf, and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone would be able to safely travel around the zone using alternate routes. Exceptions to this proposed rule would include vessels measuring less than 100 feet in length overall and not engaged in towing. The Eighth Coast Guard District Commander, or a designated representative, would consider requests to transit through the proposed safety zone 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. This proposed safety zone would not have a significant economic impact or a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone using alternate routes. Based on the limited scope of the safety zone, any delay resulting from using an alternate route is expected to be minimal depending on vessel traffic and speed in the area. Additionally, exceptions to this proposed rule would include vessels measuring less than 100 feet in length overall and not engaged in towing, as well as any attending vessel, as defined in 33 CFR 147.20. Entry into and transit through the proposed safety zone could be requested. Such requests would be considered on a case-by-case basis and may be authorized by the Eighth Coast Guard District Commander or a designated representative.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this

proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

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

## List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

## PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.869 to read as follows:

### § 147.869 Safety Zone; Appomattox FPS Facility, Outer Continental Shelf on the Gulf of Mexico

(a) *Description.* The Appomattox Floating Production System (FPS) system is in the deepwater area of the Gulf of Mexico at Mississippi Canyon Block 437. The facility is located at 28°34′25.47″ N, 87°56′03.11″ W (NAD 83), and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel, as defined by 33 CFR 147.20;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Eighth Coast Guard District Commander.

Dated: March 9, 2018.

**Paul F. Thomas,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 2018–05605 Filed 3–19–18; 8:45 am]

**BILLING CODE 9110–04–P**

# Notices

Federal Register

Vol. 83, No. 54

Tuesday, March 20, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 15, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 19, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food Safety and Inspection Service

*Title:* Food Safety Behaviors and Consumer Education Focus Group Research.

*OMB Control Number:* 0583—New.

*Summary of Collection:* The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as Specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statues mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, and not adulterated, and correctly labeled and packaged. FSIS, Office of Public Affairs and Consumer Education (OPACE) ensures that all segments of the farm-to-table chain receive valuable food safety information. The consumer education programs developed by OPACE's Food Safety Education Staff inform the public on how to safely handle, prepare, and store meat, poultry, and processed egg products to minimize incidence of foodborne illness. OPACE strives to continuously increase consumer awareness of recommended food safety practices with the intent to improve food-handling behaviors at home.

*Need and Use of the Information:* Information will be collected using focus groups. The focus groups will provide OPACE with the information needed to develop and disseminate effective messaging to help reduce foodborne illness attributed to the consumption of raw or undercooked meat and poultry. The lack of information would impede the Agency's ability to provide more useful information to consumers to help reduce foodborne illness in the United States.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 1,280.

*Frequency of Responses:* Reporting: Other (once).

*Total Burden Hours:* 410.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2018–05595 Filed 3–19–18; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 15, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 19, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Office of the Assistant Secretary for Civil Rights**

*Title:* Equal Employment Opportunity Formal Complaint Form.

*OMB Control Number:* 0508—New.

*Summary of Collection:* Under 29 CFR 1614.104, ''A complaint must be filed with the agency that allegedly discriminated against the complainant.'' The collection of this information is the avenue by which the individual or his representative may file such a complaint. Additionally, the requested information is necessary in order for the USDA Office of the Assistant Secretary for Civil Rights (OASCR) to address the alleged discriminatory action(s).

*Need and Use of the Information:* The requested information, which can be submitted by filling out the Equal Employment Opportunity (EEO) Formal Complaint Form or by submitting a letter, is necessary in order for the USDA OASCR to address the alleged discriminatory action. The employee, contractor, or applicant in the hiring process (respondent) is asked to provide his/her name, mailing address, property address, telephone number, email address, and the name and contact information for the representative. A brief description of who was involved in the alleged discriminatory action, what occurred, and when the event occurred, is requested. Formal complaints must be filed within 15 calendar days of the date the Notice of Right to File a Complaint is received. If information regarding the alleged discrimination is not collected from the individual who believes he/she has experience discrimination, it would not be possible for the USDA to address and rectify the alleged discrimination.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 46.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 15.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2018–05579 Filed 3–19–18; 8:45 am]

**BILLING CODE 3410–9R–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Michigan Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Monday, April 2, 2017, at 2pm EDT for the purpose discussing a project proposal to study the civil rights impact of female genital mutilation in the state.

**DATES:** The meeting will be held on Monday, April 2, 2018, at 2 p.m. EST

*Public Call Information:* Dial: 800–946–0783, Conference ID: 3589903

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting.

An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

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

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=255*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

**Agenda**

Welcome and Introductions
Discussion: Civil Rights and Female Genital Mutilation in Michigan
Public Comment
Future Plans and Actions
Adjournment

Dated: March 14, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–05553 Filed 3–19–18; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of monthly planning meetings.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Rhode Island State Advisory Committee to the Commission will convene by conference call, on Tuesday, April 3, 2018 at 11:00 a.m. (EDT). The purpose of the meeting is to review and vote on the project proposal on predatory lending and to discuss and plan other civil rights projects.

**DATES:** Tuesday, April 3, 2018, at 11:00 a.m. (EDT).

*Public Call-In Information:* Conference call number: 1–888–334–3020 and conference call ID: 8405258.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Bohor, at *ero@usccr.gov* or by phone at 202–376–7533

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–334–3020 and conference call ID: 8405258. Please be advised that before placing them into the conference call, the conference call operator may ask

callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–888–334–3020 and conference call ID: 8405258.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/committee/meetings.aspx?cid=272;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

**Agenda: Tuesday, April 3, 2018 at 11:00 a.m. (EDT)**

I. Welcome and Introductions
  Rollcall
II. Planning Meeting
  Review Proposal on Predatory Lending
  Vote on Predatory Lending Proposal
  Discuss Next Steps for Predatory Lending Project
III. Other Discussion
IV. Open Comment
V. Adjournment

Dated: March 15, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–05601 Filed 3–19–18; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–061, C–533–876]**

### Fine Denier Polyester Staple Fiber From the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India

**Correction**

In notice document 2018–05371 beginning on page 11681 in the issue of Friday, March 16, 2018, make the following correction:

On page 11682, in the first column, the left column heading in table two, ''Exporter/Producer from China'' should read ''Exporter/Producer from India''.

[FR Doc. C1–2018–05371 Filed 3–19–18; 8:45 am]

BILLING CODE 1301–00–D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG033**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Exempted Fishing Permit; Correction

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

**ACTION:** Notice of receipt of applications for exempted fishing permits; request for comments; correction.

**SUMMARY:** NMFS announces the receipt of five applications for exempted fishing permits (EFPs) from the Florida Fish and Wildlife Conservation Commission (FWC), Alabama Department of Conservation and Natural Resources (ADCNR), Mississippi Department of Marine Resources (MDMR), Louisiana Department of Wildlife and Fisheries (LDWF), and Texas Parks & Wildlife Department (TPWD). If granted, the EFPs would authorize the applicants, with certain conditions, to set the season(s) for red snapper caught by the private angling component, the Federal charter vessel/headboat (for-hire) component, or both, as applicable, and landed in each respective state. The EFPs would do so by exempting persons from the annual closed Federal fishing seasons if they are landing red snapper in the participating states during the states' open seasons as set by those states, and described in more detail below. These annual closed Federal fishing seasons are the seasonal closure for red snapper which is January 1 through May 31 each year, and the closures that occur based on when NMFS projects that the red snapper annual catch targets will be reached. The private angling component includes state-permitted for-hire vessels and any red snapper landings by these for-hire vessels would be counted against the private angling component quota. However, these state-permitted for-hire vessels would not be able to fish in Federal waters. NMFS would set separate Federal seasons for Federally permitted for-hire vessels and private-anglers not covered by any EFP. Red snapper landings would be monitored by the respective states and the state seasons set under the EFPs would close when a state's assigned quota is reached, or projected to be reached. These studies, to be conducted in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf), are intended to test the effectiveness of Gulf state management of recreationally caught red snapper. This notice is republished in its entirety and serves to correct information previously published in the **Federal Register** on March 12, 2018, concerning FWC, ADCNR, and TPWD application details.

**DATES:** Written comments must be received on or before April 2, 2018.

**ADDRESSES:** You may submit comments on the application, identified by ''NOAA–NMFS–2018–0029'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0029,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, 727–824–5305; email: *peter.hood@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

On March 12, 2018, NMFS published in the **Federal Register** a notice of receipt of applications for EFPs and requested public comment (83 FR 10683). In that notice, four statements were in error. First, the amount of red snapper requested by FWC was incorrectly stated as 1,305,360 lb (592,101 kg), round weight. This is the amount that Florida used to project its season, which is 20 percent below the requested amount of 1,631,700 lb (740,127 kg), round weight. Also, the FWC proposed response to any overage of the quota in 2018 was not accurately stated; FWC would not reduce the quota for 2019, but would adjust the season in 2019. Next, the published notice contained the statement ''Currently, ADCNR is projecting a 47-day season from June 1 through July 17.'' That statement is incorrect as the planned season of 47 fishing days for Alabama in 2018 is not intended to consist of consecutive calendar days but instead to consist of weekends only. Therefore, the sentence should read as, ''Currently, ADCNR is projecting a season of 47 fishing days.'' Finally, the amount of red snapper requested by TPWD was incorrectly stated as 1,056,495 lb (479,218 kg), round weight. This amount was based on the 2017 adjusted recreational quota while the correct amount requested was 1,077,280 lb (488,646 kg), round weight, and is based on the 2018 recreational quota. The previously published comment period deadline of April 2, 2018, remains in effect and all comments received from either the March 12, 2018, or this notice will be considered.

Currently, the recreational harvest of red snapper in the Gulf EEZ is managed, among other measures, through the use of a 2-fish recreational bag limit, 16-inch (40–6 cm), total length (TL) minimum size limit, and separate quotas and annual catch targets (ACTs) for the private angling and Federal for-hire components within the recreational sector. State-permitted for-hire vessels are included in the private angling component, but are not able to fish in Federal waters. The recreational sector for red snapper in or from Federal waters is closed from January 1 through May 31 each year. Prior to June 1 each year, NMFS determines the respective component Federal season lengths based on the ACTs, taking into account red snapper recreational seasons in state waters. The recreational components were established through Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), which allocated red snapper resources between the private angling and Federal for-hire components; established component-specific accountability measures (AMs) through the use of component ACTs to reduce the likelihood of quota overages, and implemented a 3-year sunset provision for the regulations implemented through Amendment 40 (80 FR 22422, April 22, 2015). The sunset provision was subsequently extended for an additional 5 years (through December 31, 2022) by Amendment 45 to the FMP (81 FR 86971, December 2, 2016). The Gulf EEZ recreational quota for red snapper is 6.733 million lb (3.054 million kg), round weight. The current component quotas are 2.848 million lb (1.292 million kg), round weight, for for-hire and 3.885 million lb (1.762 million kg), round weight, for private angling.

The recreational harvest of red snapper is also constrained by section 407(d) of the Magnuson-Stevens Act. This section requires separate quotas for commercial and recreational fishing (which for the purposes of the subsection includes charter fishing), and a prohibition on the retention of fish when each sector quota is reached. Thus, should the total recreational sector quota be reached, recreational fishing in the Gulf EEZ is prohibited.

The marine resource management agencies of the five Gulf states have submitted EFP applications for the recreational harvest of red snapper for the 2018 and 2019 fishing years. These EFPs would be used to test data collection and quota monitoring efforts for state management of red snapper. Under the proposed EFPs, persons landing red snapper in the participating states would be exempt from current Federal regulations authorizing the annual closed Federal fishing seasons (seasonal closure and ACT closure) and, therefore, could fish for and possess red snapper in the EEZ consistent with the state seasons. The timing of state season openings would be determined by each state. Each Gulf state would monitor its respective recreational landings, and if the landings reach, or are projected to reach, the assigned quota, the state would close its season for the remainder of the fishing year. Private anglers and for-hire operators landing red snapper in the states participating in the EFPs would be required to have the appropriate permits and licenses for the states where they will land the fish and abide by any other relevant Federal regulations, including a recreational bag limit of 2 fish per person per day and a minimum size limit of 16 inches (40.6 cm), TL. The following provides an overview of each state's EFP application. More detailed information is provided in the respective applications and can be viewed at website: *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/LOA_and_EFP/2018/RS%20state%20pilot/home.html*.

**FWC**

FWC requests an EFP to conduct a pilot study during the 2018 and 2019 fishing years to test data collection and quota monitoring methodologies for the private angling component. The EFP application does not include federally permitted for-hire vessels. FWC requests that 1,631,700 lb (740,127 kg), round weight, of red snapper from the Gulf recreational private angling component quota be made available each year for fish landed in Florida. This requested quota is based on the proportion of red snapper landed in Florida during 2006 through 2015, except for 2010 landings, which are excluded as a result of the Deepwater Horizon MC252 oil spill. The quota, reduced by a 20 percent buffer to account for management uncertainty, would be the basis for calculating Florida's Special Red Snapper Fishing Season. Private anglers would be required to sign up for the state's Gulf Reef Fish Angler program to land select reef fish species not included in the EFP application and still subject to applicable regulations, as well as red snapper. Red snapper landings would be monitored through the state's Gulf Reef Fish Survey. In addition, anglers would provide landings information through a smartphone/tablet application. For 2018, the projected red snapper fishing season for private anglers would be May 25 through June 17 for the Gulf waters off Florida, based on the requested quota. If recreational landings are less than the assigned quota at the end of this season, and the Federal recreational quota has not been met, fishing could reopen in the fall of 2018 and/or 2019 to land the uncaught portion of the quota. Should the recreational quota be exceeded in 2018, FWC proposes to make adjustments in red snapper regulations to account for the overage in the following year.

**ADCNR**

The purpose of the EFP requested by ADCNR is to test an Alabama red snapper management program for the private angling component. The EFP application does not include federally permitted for-hire vessels. ADCNR proposes an annual state private angling component quota of 984,291 lb (446,467 kg), round weight, for 2018 and 2019. ADCNR determined that this quota equals 10 percent of the red snapper biomass estimated by university researchers to occur in waters off Alabama. The red snapper biomass is estimated from fishery-independent biomass estimates over the three most recent years that data are available (the years 2014 through 2016 for the 2018 fishing year). For 2018, ADCNR would allow red snapper to be landed in Alabama on weekends (Friday through Sunday) starting on June 1 and continuing until the assigned quota, less 10 percent used as a buffer to prevent quota overages, is reached or projected to be reached. Currently, ADCNR is projecting a season of 47 fishing days. If sufficient quota is available, ADCNR would reopen the season in the fall. The 2019 state private angling recreational season would be determined at a later date. Red snapper landings by anglers fishing from private angler vessels and state-permitted charter vessels would be monitored through a mandatory electronic reporting program. Should the assigned quota be exceeded in 2018, ADCNR proposes a payback of the quota overage for the following year.

**MDMR**

MDMR is requesting an EFP to determine if a state recreational quota for red snapper can be accurately managed through a state management program for the private angling component. In addition, recreational harvest and biological information on this species would be collected and analyzed by the state. The EFP application does not include federally permitted for-hire vessels. The EFP application requests an annual quota of 137,949 lb (62,573 kg), round weight, of red snapper for the private angling component to be landed in Mississippi for 2018 and 2019. This quota is based on 2017 landings reported to MDMR's mandatory Tails n Scales electronic reporting system. Landings in 2018 and 2019 would be tracked by the state through this same electronic reporting system and managed to the quota, reduced by a 10 percent buffer to prevent quota overages, before closing the season. In addition, landings would be validated by MDMR staff through a dockside survey, phone survey, and visual effort survey conducted by MDMR. The red snapper season would begin on May 1 of each year and remain open until the quota is projected to be reached. Should the assigned quota be exceeded in 2018, MDMR proposes a payback of the quota overage for the following year.

**LDWF**

The EFP application from the LDWF proposes to test a state-based management approach for red snapper. The application requests that the state recreational quota be 743,000 lb (337,019 kg), round weight, for the private angling component and 317,000 lb (143,789 kg), round weight, for the Federal for-hire component for the 2018 and 2019 fishing years. LDWF determined these quotas based on the historical landings formula (50 percent * [1986–2005, 2007–2009, 2011–2013 landings in pounds] + 50 percent * [2007–2009, 2011–2013 landings in pounds] applied to Federal for-hire and private angling component allocations from Amendment 40 (80 FR 22422, April 22, 2015). LDWF proposes to begin both the private angling and for-hire seasons on May 25 in 2018, and May 24 in 2019 (the Friday before Memorial Day) until the respective quota is reached. The private angling season would consist of 3-day weekends (Friday through Sunday), but also include the Memorial Day, Independence Day, and Labor Day holidays each year. The Federal for-hire season would be 7 days per week. Recreational landings would be monitored through LDWF's LA Creel survey; however, private anglers and for-hire operators would be encouraged to also report landings though a state-approved electronic reporting system. Should the overall recreational quota for the state be exceeded in 2018, LDWF proposes a payback of the overage for the 2019 fishing year.

**TPWD**

The purpose of the EFP submitted by TPWD is to test data collection and recreational quota monitoring methodologies during the 2018 and 2019 fishing years for use in managing the recreational harvest of red snapper off Texas. TPWD requests 1,077,280 lb (488,646 kg), round weight, of red snapper to be used by the private angling and Federal for-hire components. The red snapper private angling season in state waters begins January 1 each year. Because offshore weather conditions off Texas are generally unfavorable around the traditional June 1 Federal recreational red snapper season start date, TPWD, working through the Texas Parks and Wildlife Commission, proposes to prohibit red snapper caught in Federal waters from being landed in Texas until sometime after June 1 in 2018. At that time, a season will be established allowing red snapper from Federal waters to be landed. In 2019, the recreational season could start prior to June 1 to take advantage of better weather conditions that occur off Texas in the winter and spring and would be determined by the state at a later date. The red snapper recreational harvest would be monitored using the Texas Marine Sport Harvest Monitoring Program (TMSHMP), NOAA's Southeast Region Headboat Survey, and a self-reported harvest system using the iSnapper application for smartphones and tablets. To ensure timely reporting of private angler and charter vessel landings, intercepts from the TMSHMP creel survey would be sent in daily to TPWD. Additionally, weekly landing reports from NOAA's Southeast Region Headboat Survey would be used to monitor headboat landings. Texas will project total landings by sector based on the number of red snapper observed by samplers during the season. All red snapper landed in Texas will be counted against Texas' assigned recreational quota and the Texas season would be closed when the combined estimated recreational red snapper landings are projected to reach the recreational quota. Should the assigned quota be exceeded in 2018, TPWD proposes to make adjustments in red snapper regulations such as shortening the season for catching fish in the Gulf EEZ, changing the timing of the season, or revising state bag limits to account for the overage.

**Additional Information**

The Gulf of Mexico Fishery Management Council (Council) reviewed the EFP applications at its January 2018 meeting. The Council recommended approval of each state's EFP application as long as the length of the Gulf-wide Federal for-hire component season is not affected by the issuance of these EFPs.

Because all the state EFP applications include the private angling component, if they are all issued and accepted that component's overall Gulf quota would be divided among the states, as requested, and landings would be regulated through each state's management program covered under the EFP. Federal waters would be closed to red snapper private angling, but the EFP would exempt from the closure those individuals with a license from a state

that is open to land red snapper. However, if not all of the EFPs are issued and accepted, NMFS would set a Gulf-wide Federal private angling season to allow those anglers from the non-participating states to fish for red snapper in the EEZ.

For the Federal for-hire component, only LDWF and TPWD have proposed including this component in their EFPs. Therefore, if EFPs were approved as submitted by the five Gulf states, NMFS would still set a Federal season throughout the entire Gulf EEZ for the Federal for-hire component. Depending on the parameters of any final EFPs, the potential exists for Texas and Louisiana federally permitted for-hire vessels to fish during both the state season covered under an EFP and the Federal for-hire Gulf EEZ season.

In addition, the quotas requested by Texas and Louisiana are based on higher landings from past years rather than landings in recent years. Because NMFS projects the Federal season based on recent landings, NMFS would have to reduce the length of the Federal for-hire season to account for the additional pounds of fish requested by Texas and Louisiana. This would be inconsistent with the Council's recommendation that NMFS issue the EFPs as long as the length of the Gulf-wide Federal for-hire component season is not affected. Alternatively, NMFS could reduce the quotas requested by Texas and Louisiana to be consistent with recent landings. Regardless of whether both or just one of the components is managed under the state EFPs, should NMFS determine that the Gulf-wide recreational red snapper quota has been met, the exemption from the closure under the EFP would no longer be valid for that fishing year because the retention of red snapper in Federal waters would be prohibited under the regulations that implement the mandatory provisions of Section 407(d) of the Magnuson-Stevens Act.

NMFS finds these applications warrant further consideration. If they are granted, NMFS may include conditions or modifications such as changes to the amount of the quotas assigned to each state and removal of the Federal for-hire component from the EFP. The applications are considered together in this notice because they each would require a portion of the private-angling and Federal for-hire quotas; however, each application is independent and will be considered individually as part of the overall recreational management of Gulf red snapper.

Final decisions on issuance of the EFPs will depend on a NMFS review of public comments received on the applications, consultations with the affected states, the Council, and the U.S. Coast Guard, and a determination that each is consistent with all applicable laws.

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

Dated: March 15, 2018.

**Emily H. Menashes,**

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

[FR Doc. 2018–05603 Filed 3–19–18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF830**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction at the City Dock and Ferry Terminal, in Tenakee Springs, Alaska

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request from the Alaska Department of Transportations and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to conducting improvements at the Tenakee Springs city dock and ferry terminal, in Tenakee Springs, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization, and agency responses will be summarized in the final notice of our decision

**DATES:** Comments and information must be received no later than April 19, 2018.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.molineaux@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/construction.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Molineaux, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or

attempt to harass, hunt, capture, or kill any marine mammal.

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

**National Environmental Policy Act**

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

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

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

**Summary of Request**

On October 23, 2017, NMFS received a request from ADOT&PF for an IHA to take marine mammals incidental to conducting improvements at the Tenakee Springs city dock and ferry terminal, in Tenakee Springs, Alaska. The application was considered adequate and complete on January 30, 2018. ADOT&PF's request is for take of seven species of marine mammals by Level B harassment only. Neither ADOT&PF nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year, hence, we do not expect subsequent MMPA IHAs to be issued for this particular activity.

**Description of Proposed Activity**

*Overview*

The ADOT&PF plans to make improvements to the Tenakee Springs Ferry Terminal located in Tenakee Springs, Alaska, on Chichigof Island in southeast Alaska (Figure 1–1 of the application). The facility is a multi-function dock and active ferry terminal located in the center of town (see Figure 1–2 and Figure 1–3 in application). The project's proposed activities that have the potential to take marine mammals include vibratory and impact pile driving, drilling operations for pile installation (down-hole hammer), and vibratory pile removal.

The purpose of the project is to replace the existing, aging mooring and transfer structures nearing the end of their operational life due to corrosion and wear with modern facilities that provide improved operations for Alaska Marine Highway System (AMHS) ferry vessels, as well as freight and fueling operators, servicing the community of Tenakee Springs. Planned improvements include the installation of new shore side facilities and marine structures and the renovation of existing structures. This will accommodate cargo and baggage handling, vessel mooring, passenger and vehicle access gangways, and re-establish existing electrical and fuel systems. Improvements will enhance public safety and security.

*Dates and Duration*

In-water project construction activities will begin no sooner than June 1, 2019. Pile installation and removal is expected to be completed in 93 working days within a 4-month window beginning sometime after June 1, 2019. Pile installation will be intermittent and staggered depending on weather, construction and mechanical delays, marine mammal shutdowns, and other potential delays and logistical constraints. Given the possibility of schedule delays and other unforeseen circumstances, an IHA is being requested for a full year, from June 1, 2019 through May 31, 2020.

*Specific Geographic Region*—The Tenakee Springs Ferry Terminal is located in the City of Tenakee Springs, Alaska, at 57°46′45.6″ N, 135°13′09.1″ W, on Chichagof Island, on the north shore of Tenakee Inlet, in southeast Alaska (Figure 1–1 and Figure 1–2). Tenakee Springs is part of the Hoonah-Angoon Census Area. In 2016, there were an estimated 130 residents of Tenakee Springs. It is the second largest city on Chichagof Island.

The Tenakee Springs Ferry Terminal is an active ferry terminal located in Tenakee Inlet and provides the primary access point to the city of Tenakee Springs. Improvements and new construction will take place in the same location as the existing dock. A sea plane float is located immediately east of the ferry terminal and a small boat harbor is located approximately 700 meters east of the terminal (see Figure 1–2 of application).

The town of Tenakee Springs is located on the north side of Tenakee Inlet, about 16 kilometers (km) (9.9 miles) west of where the Inlet opens to Chatham Strait. Tenakee Inlet is a long, narrow fjord with steep, rocky sides interspersed with extensive mudflats and intertidal zones. Water depths consistently reach 900 to 1,100 meters (2,950 to 3,600 feet) in the center of the Inlet, with at least one location deeper than 1,280 meters (4,200 feet). The shoreline is complex and meandering, interspersed with numerous coves, islands, and rocky outcroppings. Numerous rivers and creeks feed into the Inlet, contributing to the highly productive marine environment.

The Inlet supports abundant marine resources, including salmon, herring, crab, and shrimp. Marine mammals use the Inlet regularly, attracted to the rich foraging grounds. Humpback whales are seen bubble feeding in summer, and harbor seals haul out on rocky islets around the area.

Baseline background (ambient) sound levels in Tenakee Inlet are unknown. The areas around the existing ferry terminal are frequented by ferries, fishing vessels, and tenders; barges and tugboats; float planes; and other commercial and recreational vessels that use the small-boat harbor, city dock, and other commercial facilities.

*Detailed Description of Specific Activity*

The proposed action includes pile installation and removal for the various aspects of the project (see Figure 1–4 of application). There will be no dredging or removal of substrate, nor any deposition of fill or armor rock associated with the project. Above-water construction will consist of the installation of concrete platform decking panels, utility lines, and a fuel building. The new facility will continue to serve as the AMHS ferry terminal and will support shipping and receiving of commercial and service-industry goods. Given the lack of road access to Tenakee Springs, the ferry terminal is an essential component of infrastructure, providing critical access between Tenakee Springs and the rest of the region. Planned improvements will not add any additional berths for vessels,

and the existing capacity of the facilities will remain the same.

The project includes the following components:

- Removal and replacement of an existing 12-foot by 240-foot approach dock decking and installation of additional steel pipe support piles;
- Removal of an existing city storage and fuel building and pile-supported dock and timber fender piles;
- Removal of an existing steel gangway float, platform, and associated steel pipe piles; and
- Removal of three, three-pile berthing and mooring dolphins.

The project will also include the installation of:

- A 50-foot by 70-foot pile-supported ferry staging dock;
- A 50-foot by 60-foot pile-supported dock with new fuel building and associated dock mounted fender system;
- An 11-foot by 90-foot steel transfer bridge and pile-supported abutment;
- A steel bridge support float with adjustable intermediate ramp and apron with two, four-pile float restraint dolphins;
- Four, four-pile berthing dolphins; and
- A ferry access skiff float and associated steel pipe pile restraints.

*Removal of Old Piles*

The project will require the removal of approximately 84 piles of varying sizes and materials (Table 1–1). Not all existing structures and piles will be removed (Figure 1–4). It is anticipated that, when possible, existing piles will be extracted by directly lifting them with a crane. A vibratory hammer will be used only if necessary to extract piles that cannot be directly lifted. Removal of each old pile is estimated to require no more than 15 minutes of vibratory hammer use.

TABLE 1—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE REMOVAL

| Pile diameters & material | Project component | Number of piles | Total number of piles | Vibratory duration per pile (min) | Estimated total number of hours | Number of piles per day (range) | Days of removal |
|---|---|---|---|---|---|---|---|
| 12.75-inch Steel Piles | Approach Dock | 2 | 2 | 15 | 0.5 | 2 | 1 |
| 14-inch Timber Piles | City Dock Fender Piles | 33 | 42 | 15 | 10.5 | 5–10 | 9 |
| | City Storage Building Dock | 9 | | | | | |
| 14-inch Steel Piles | City Dock | 14 | 26 | 15 | 6.5 | 5–10 | 6 |
| | Berthing Dolphin Fenders | 12 | | | | | |
| 16-inch Steel Piles | Berthing Dolphins | 9 | 9 | 15 | 2.25 | 5–10 | 2 |
| 18-inch Steel Piles | Steel Float | 5 | 5 | 15 | 1.25 | 5 | 1 |
| Totals | | | 84 | | 21 | | 19 |

*Installation of New Piles*

The Project will require the installation of 121 piles of varying sizes and materials (see Table 2). Tension anchors will be installed in 86 of the 121 total piles. Initial installation of steel piles through the sediment layer may be done using vibratory methods for up to 15 minutes per pile. If the sediment layer is very thin, instead of vibratory methods, a few strikes from an impact hammer may be used to seat some steel piles into the weathered bedrock before drilling begins. It is possible that only an impact hammer and drilling will be used for some piles, and only a vibratory hammer and drilling will be used for other piles, depending on sediment conditions and as decided by the construction contractor. Following initial pile installation, the mud accumulation on the inside of the pile will be augured out (or cleaned through another method), as necessary. Next, a hole (rock socket) will be drilled in the underlying bedrock by using a down-hole hammer (see Figure 1–5 of IHA application). A down-hole hammer is a drill bit that drills through the bedrock and a pulse mechanism that functions at the bottom of the hole, using a pulsing bit to break up the rock to allow removal of the fragments and insertion of the pile. The head extends so that the drilling takes place below the pile. Drill cuttings are expelled from the top of the pile as dust or mud and allowed to settle at the base of the pile. It is estimated that drilling piles through the layered bedrock will take about 2–3 hours per pile.

Drilling will create a 10-foot-deep bedrock socket that holds the pile in place. The bedrock will attenuate noise production from drilling and reduce noise propagation into the water column. Additionally, the casing used during drilling acts like a cofferdam and will block noise, further reducing noise levels (82 **Federal Register** [FR] 34632; proposed IHA for the Gary Paxton Industrial Park Dock Modification Project in Sitka, Alaska). However, noise levels from drilling the bedrock socket to support piles will likely exceed the 120-decibel (dB) root mean square (rms) threshold for Level B harassment from continuous noise (Section 6.2.2) during at least a portion of the drilling.

If necessary after drilling, no more than 30 blows from an impact hammer will be used to confirm that piles are set into bedrock (proofed). Proofing will require approximately 5–10 minutes per pile.

Tension anchors will be installed on 86 of the 121 steel piles. In general, the farthest seaward piles will utilize tension anchors. To anchor each pile following pile installation, a 10-inch casing will be inserted into the center of the pile and an 8-inch rock anchor drill will be lowered into the casing and used to drill into bedrock. Rock fragments will be removed through the top of the casing as dust or mud. Finally, the drill and casing will be removed, and an anchor attached by an anchor rod will be inserted into the hole. The hole will be filled with grout, which will harden, thereby encapsulating the anchor in the borehole and securing the pile and anchor to bedrock. Once installed, tension anchors are tightened, applying tension to the pile to prevent movement within the rock socket. Eight of the tension anchors will be passive, which means they will not be tightened. This will provide the pile with a small amount of play, which will allow the pile to move until it meets the extent of the tension anchor.

Drilling for anchors takes place below the 10-foot-deep bedrock socket that holds the pile in place, and the bedrock serves to attenuate noise production from drilling activity and reduce noise propagation into the water column. Additionally, the casing acts like a cofferdam and will block noise; therefore, anchor drilling will result in low levels of in-water noise that do not

approach injury or harassment levels for marine mammals (82 FR 34632; proposed IHA for the Gary Paxton Industrial Park Dock Modification Project in Sitka, Alaska). No take for harassment of marine mammals from anchor drilling is requested.

Installation of timber piles will use only an impact hammer, and will require approximately 75 strikes per pile, or approximately 20–30 minutes to install each pile.

Pile installation activities will occur in waters from zero to 36 feet (0 to 11 meters) deep within or immediately adjacent to the existing dock footprint. It is anticipated that an ICE model vibratory driver or equivalent hammer and a Delmag D30 or Vulcan impact hammer, or equivalent hammer will be used to install the piles.

TABLE 2—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION

| Pile diameters & material | Project component | Number of piles | Total number of piles | Vibratory duration per pile (min) | Drilling duration per pile [a] (min) | Impact strikes per pile | Estimated total number of hours | Number of piles per day (range) | Days of installation |
|---|---|---|---|---|---|---|---|---|---|
| 24-inch Steel Piles [a] | City Dock | 22 | 46 | 15 | 120 | 30 | 107 | 2–3 | 23 |
| | Ferry Staging Dock | 20 | | | | | | | |
| | Transfer Bridge Abutment | 4 | | | | | | | |
| 30-inch Steel Piles [a] | Float Restraints (Vertical) | 4 | 20 | 15 | 180 | 30 | 67 | 2–3 | 10 |
| | Berthing Dolphins (Battered). | 8 | | | | | | | |
| | Berthing Dolphins (Vertical). | 8 | | | | | | | |
| 20-inch Steel Piles [a] | Float Restraints (Battered) | 4 | 4 | 15 | 180 | 30 | 13 | 2–3 | 2 |
| 18-inch Steel Piles [a] | Approach Dock | 8 | 21 | 15 | 120 | 30 | 49 | 2–3 | 11 |
| | Berthing Fenders | 10 | | | | | | | |
| | Skiff Float | 3 | | | | | | | |
| 14-inch Timber Piles | Boat Moorage Fenders | 30 | 30 | NA | NA | 75 | 10 | 5–10 | 6 |
| 8-inch Tension Anchors | Tension Anchors | 78 | [b] 86 | NA | 60 | NA | 86 | 4–8 | 22 |
| | Passive Tensions Anchors | 8 | | | | | | | |
| Totals | | | 121 | | | | 332 | | 74 |

[a] All 91 steel piles will require drilling.
[b] Tension anchors will be installed in a subset of piles and therefore are not included in the total number of piles.

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 3 lists all species with expected potential for occurrence in Tenakee Springs, Alaska and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (Muto 2017a). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2016 SARs (Muto, 2017a), Towers *et al.,* 2015 (solely for northern resident killer whales), and draft 2017 SARs (Muto 2017b).

Two cetacean species have ranges near Tenakee Inlet but are unlikely to occur in the project area: The Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) and gray whale (*Eschrichtius robustus*). The ranges of both the Pacific white-sided dolphin and gray whale are suggested to overlap with Tenakee Inlet (Muto, 2017a), but no sightings have been documented in the project area (Dahlheim *et al.* 2009).

TABLE 3—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY

| Common name | Scientific name | MMPA stock | ESA/ MMPA status; strategic (Y/N) [1] | Stock abundance Nbest, (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| Family Balaenidae: | | | | | | |
| Humpback whale | *Megaptera novaeangliae* | Central North Pacific | E, D,Y | 10,103 (0.3, 7,890, 2006) | 83 | 21 |
| Minke whale | *Balaenoptera acutorostrata* | Alaska | -, N | N.A | N.A. | N.A. |

TABLE 3—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY—Continued

| Common name | Scientific name | MMPA stock | ESA/ MMPA status; strategic (Y/N) [1] | Stock abundance Nbest, (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Family Delphinidae: | | | | | | |
| Killer whale | *Orcinus orca* | Alaska Resident | -, N | 2,347 (N.A., 2,347, 2012) [4] | 23.4 | 1 |
| | | West Coast Transient | -, N | 243 (N/A, 243, 2009) [4] | 2.4 | 1 |
| | | Northern Resident | -, N | 290 (N/A, 290, 2014) [6] | 1.96 | 0 |
| Family Phocoenidae: | | | | | | |
| Harbor porpoise | *Phocoena phocoena* | Southeast Alaska | -, Y | 975 (0.10, 896, 2012) [5] | [5] 8.9 | [5] 34 |
| Dall's porpoise | *Phocoenoides dalli* | Alaska | -, N | 83,400 | N.A. | 38 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | |
| Steller sea lion | *Eumatopia jubatus* | Western U.S.[7] | E, D; Y | 50,983 (N.A., 50,983, 2016) | 320 | 241 |
| | | Eastern U.S. | -, D, Y | 41,638 (N/A, 41,638, 2015) | 2,498 | 108 |
| Family Phocidae (earless seals): | | | | | | |
| Harbor seal | *Phoca vitulina richardii* | Glacier Bay/Icy Strait | -, N | 7,210 (N.A.; 5,647; 2011) | 169 | 104 |

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

[2] NMFS marine mammal stock assessment reports online at: *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 (N/A).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] N is based on counts of individual animals identified from photo-identification catalogs.

[5] In the SAR for harbor porpoise (NMFS 2017), NMFS identified population estimates and PBR for porpoises within inland Southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative). The calculated PBR is considered unreliable for the entire stock because it is based on estimates from surveys of only a portion (the inside waters of Southeast Alaska) of the range of this stock as currently designated. The Annual M/SI is for the entire stock, including coastal waters.

[6] Abundance estimates obtained from Towers et al 2015.

[7] Abundance, PBR, and Annual M/SI derived from draft 2017 SARs (Muto2017b).

All species that could potentially occur in the proposed survey areas are included in Table 3. As described below, all seven species (with nine managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. In addition, sea otters may be found in Tenakee Springs. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

*Pinnipeds in the Activity Area*

Steller Sea Lion

The Steller sea lion is the largest of the eared seals, ranging along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Subsequently, NMFS published a final rule designating critical habitat for the species as a 20 nautical mile buffer around all major haulouts and rookeries, as well as associated terrestrial, air and aquatic zones, and three large offshore foraging areas (58 FR 45269; August 27, 1993). In 1997, NMFS reclassified Steller sea lions as two distinct population segments (DPS) based on genetic studies and other information (62 FR 24345; May 5, 1997). Steller sea lion populations that primarily occur west of 144° W (Cape Suckling, Alaska) comprise the western DPS (wDPS), while all others comprise the eastern DPS (eDPS); however, there is regular movement of both DPSs across this boundary (Jemison *et al.,* 2013). Upon this reclassification, the wDPS became listed as endangered while the eDPS remained as threatened (62 FR 24345; May 5, 1997) and in November 2013, the eDPS was delisted (78 FR 66140). No critical habitat for this species is designated in Southeast Alaska.

Steller sea lions are known to occur within the project area; however, systematic counts or surveys have not been completed throughout Tenakee Inlet. Therefore, the best information regarding sea lion abundance and distribution comes from anecdotal reports from local residents and extrapolations from nearby haulouts that have been regularly monitored.

Anecdotal reports indicate that sea lions are generally present only in the fall and winter. Reports of these anecdotal observations also suggest that as many as 10–20 may swim by on a winter day, although most feed at night when their herring prey tend to be near the water's surface (Wheeler, K., pers. comm.).

Steller sea lions use terrestrial haulout sites to rest and take refuge. They also gather on well-defined, traditionally used rookeries to pup and breed. These habitats are typically gravel, rocky, or sand beaches; ledges; or rocky reefs. The closest Steller sea lion haulout to the project area is the Tenakee Cannery Point haulout, which is approximately 8.9 km (4.8 nautical miles) east of the project site (Fritz *et al.,* 2016c; see Figure 4–1 of application). Recent summer counts have not recorded any Steller sea lions at this haulout, and historical counts between April and September have not exceeded 12 individuals during any survey (Fritz *et al.,* 2016b). This haulout appears to be most active between October and March (Figure 4–2), which is consistent with anecdotal reports of sea lion abundance in the project area (Rasanen, L., pers. comm.; Wheeler, K., pers. comm.). Non-pup counts conducted between October and March from 2001 to 2004 averaged 106 individuals and ranged from 16 to 251 (Fritz *et al.,* 2016b). Pups have not been counted at this haulout (Fritz *et al.,* 2016a). In addition to those counted at

the haulouts, as many as a few hundred more sea lions occur throughout Tenakee Inlet in small hunting groups (Rasanen, L., pers. comm.). The Point Marsden and Emmons haulouts are also located within 20 nautical miles of Tenakee Springs, but it is unlikely that individuals from those haulouts regularly inhabit Tenakee Inlet. Experts with the Alaska Fisheries Science Center of NMFS estimate that roughly 17.8 percent of the Steller sea lions at the Tenakee Cannery Point haulout are members of the western DPS (L. Fritz, pers. comm; L. Fritz, unpublished data) while the rest (82.2 percent) are from the eastern DPS. Steller sea lions are included in Alaska subsistence harvests. Since subsistence harvest surveys began in 1992, the number of households hunting and harvesting sea lions has remained relatively constant at low levels (Wolf *et al.,* 2013).

Harbor Seal

Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. They haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters. Harbor seals are generally non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Muto, 2017a).

Harbor seals in Alaska are partitioned into 12 separate stocks based largely on genetic structure: (1) The Aleutian Islands stock, (2) the Pribilof Islands stock, (3) the Bristol Bay stock, (4) the North Kodiak stock, (5) the South Kodiak stock, (6) the Prince William Sound stock, (7) the Cook Inlet/Shelikof stock, (8) the Glacier Bay/Icy Strait stock, (9) the Lynn Canal/Stephens Passage stock, (10) the Sitka/Chatham stock, (11) the Dixon/Cape Decision stock, and (12) the Clarence Strait stock. Only the Glacier Bay/Icy Strait stock is considered in this proposed IHA. The range of this stock includes Cape Fairweather southeast to Column Point, extending inland to Glacier Bay, Icy Strait, and from Hanus Reef south to Tenakee Inlet (Muto, 2017a).

Survey data from 2003 through 2011 indicate that there are eight harbor seal haulouts in Tenakee Inlet and a number of others nearby in Chatham Strait and Freshwater Bay (Figure 4–3). The nearest haulout to the project site is located on Tenakee Reef, near Tenakee Reef Light (a navigational and warning light for vessels), approximately 1 km south of the ferry terminal. Anecdotal observations indicate that up to 200 harbor seals may haul out on the rocks at and around the Tenakee Reef Light at any time of year (Rasanen, L., pers. comm.). Two additional harbor seal haulouts are located approximately 5.2 and 10.0 km from the ferry terminal, on Strawberry Island and in Crab Bay, respectively.

Aerial haulout surveys conducted in August 2011 divide Tenakee Inlet into four survey units. The survey unit along the north shore of the Inlet, including the project site, had a population estimate of 61 individuals. Other survey units in Tenakee Inlet had between 1 and 64 individuals. This information comes from a single year of surveys, and standard errors on these estimates are very high; therefore, confidence is low (London *et al.,* 2015). Researchers estimate that the total abundance in Tenakee Inlet was approximately 259 seals in 2011, including about 170 in the upper inlet and approximately 89 near the mouth (London, J., pers. comm.).

Because harbor seals are non-migratory, we do not suspect that abundance fluctuates seasonally, but distribution throughout Tenakee Inlet and Chatham Strait likely fluctuates drastically based on numerous environmental factors.

*Cetaceans in the Action Area*

Humpback Whale

The humpback whale is distributed worldwide in all ocean basins. In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres, and migrate to high latitudes in the summer to feed. The historic summer feeding range of humpback whales in the North Pacific encompassed coastal and inland waters around the Pacific Rim from Point Conception, California, north to the Gulf of Alaska and the Bering Sea, and west along the Aleutian Islands to the Kamchatka Peninsula and into the Sea of Okhotsk and north of the Bering Strait (Johnson and Wolman 1984).

Under the MMPA, there are three stocks of humpback whales in the North Pacific: (1) The California/Oregon/Washington and Mexico stock, consisting of winter/spring populations in coastal Central America and coastal Mexico which migrate to the coast of California to southern British Columbia in summer/fall; (2) the central North Pacific stock, consisting of winter/spring populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands; and (3) the western North Pacific stock, consisting of winter/spring populations off Asia which migrate primarily to Russia and the Bering Sea/Aleutian Islands. The central North Pacific stock is the only stock that is found near the project activities.

On September 8, 2016, NMFS published a final rule dividing the globally listed endangered species into 14 DPSs, removing the worldwide species-level listing, and in its place listing four DPSs as endangered and one DPS as threatened (81 FR 62259; effective October 11, 2016). Two DPSs (Hawaii and Mexico) are potentially present within the action area. The Hawaii DPS is not listed and the Mexico DPS is listed as threatened under the ESA. The Hawaii DPS is estimated to contain 11,398 animals where the Mexico DPS is estimated to contain 3,264 animals.

Within the action area, humpback whales are seen most frequently from September through February although sightings may extend into April (Straley and Pendell 2017). Humpback whales are found throughout southeast Alaska in a variety of marine environments, including open-ocean, near-shore waters, and areas with strong tidal currents (Dahlheim *et al.,* 2009). Most humpback whales are migratory and spend winters in the breeding grounds off either Hawaii or Mexico. Humpback whales generally arrive in southeast Alaska in March and return to their wintering grounds in November. Some humpback whales depart late or arrive early to feeding grounds, and therefore the species occurs in southeast Alaska year-round (Straley 1990). Across the region, there have been no recent estimates of humpback whale density, and there have been no systematic surveys of humpback whales in or near the project area. Marine mammal experts in the region have indicated that there are as many as 12 humpbacks present in Tenakee Inlet from spring through fall. During the winter, they are less common, but are regularly present (S. Lewis and M. Dahlheim, pers. comm.).

Minke Whale

Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters. In the North Pacific, minke whales occur from the Bering and Chukchi seas south to near the Equator (Leatherwood *et al.,* 1982). In Alaska, the minke whale diet consists primarily of euphausiids and walleye pollock. Minke whales are

generally found in shallow, coastal waters within 200 meters of shore (Zerbini *et al.,* 2006) and are usually solitary or in small groups of 2 to 3. Rarely, loose aggregations of up to 400 animals have been associated with feeding areas in arctic latitudes. In Alaska, seasonal movements are associated with feeding areas that are generally located at the edge of the pack ice (NMFS 2014). Surveys in southeast Alaska have consistently identified individuals throughout inland waters in low numbers (Dahlheim *et al.,* 2009).

Little is known about minke whale abundance and distribution in the project area as there have been no systematic studies conducted on the species in or near Tenakee Inlet. Surveys throughout southeast Alaska between 1991 and 2007 recorded minke whales infrequently, but noted a wide variety of habitat types used throughout all inland waters and little seasonal variation. During these surveys, the observation nearest to Tenakee Springs was in Chatham Strait, approximately 10 miles south of the mouth of Tenakee Inlet. Concentrations of minke whales were observed near the entrance to Glacier Bay. Most minke whales observed during the surveys were individual animals (Dahlheim *et al.,* 2009).

Killer Whale

Killer whales have been observed in all the world's oceans, but the highest densities occur in colder and more productive waters found at high latitudes (NMFS 2016a). Killer whales occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (Muto *et al.,* 2017a).

Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized within the Pacific U.S. Exclusive Economic Zone. This proposed IHA considers only the Alaska resident stock, northern resident and the west coast transient, all other stocks occur outside the geographic area under consideration (Muto *et al.,* 2017a).

The Alaska Resident stock occurs from southeastern Alaska to the Aleutian Islands and Bering Sea. Photo-identification studies between 2005 and 2009 identified 2,347 individuals in this stock, including approximately 121 in southeast Alaska (Muto *et al.,* 2017a). The West Coast transient stock occurs from California north through southeast Alaska. Between 1975 and 2012, surveys identified 521 individual West Coast transient killer whales. Dahlheim *et al.* (2009) noted a 5.2 percent annual decline in transient killer whales observed in southeast Alaska. The northern resident stock occurs from Washington State through part of southeastern Alaska. The trend for the Northern resident stock is an increasing population with an average of 2.1 percent annual increase over a 36-year period.

Surveys between 1991 and 2007 encountered resident killer whales during all seasons throughout southeast Alaska. Both residents and transients were common in a variety of habitats and all major waterways, including protected bays and inlets. During this study, strong seasonal variation in abundance or distribution of killer whales was not present, but there was substantial variability between years (Dahlheim *et al.,* 2009). In Tenakee Inlet, systematic surveys of killer whales have not been completed. Nevertheless, local marine mammal experts estimate that approximately one killer whale pod passes by Tenakee Springs each month (Lewis, S., pers. comm.). It is not known whether these are resident or transient whales.

Harbor Porpoise

The harbor porpoise inhabits temporal, subarctic, and arctic waters. In the eastern North Pacific, harbor porpoises range from Point Barrow, Alaska, to Point Conception, California. Harbor porpoise primarily frequent coastal waters and occur most frequently in waters less than 100 m deep (Hobbs and Waite 2010). They may occasionally be found in deeper offshore waters.

In Alaska, harbor porpoises are currently divided into three stocks, based primarily on geography: (1) The Southeast Alaska stock—occurring from the northern border of British Columbia to Cape Suckling, Alaska, (2) the Gulf of Alaska stock—occurring from Cape Suckling to Unimak Pass, and (3) the Bering Sea stock—occurring throughout the Aleutian Islands and all waters north of Unimak Pass. Only the Southeast Alaska stock is considered in this proposed IHA because the other stocks are not found in the geographic area under consideration. The 2016 SAR for this stock further delineated population estimates (Muto *et al.,* 2017a). The total estimated annual level of human-caused mortality and serious injury for Southeast Alaska harbor porpoise (n= 34) exceeds the calculated PBR of 8.9 porpoises. However, the calculated PBR is considered unreliable for the entire stock because it is based on estimates from surveys of only a portion (the inside 7of Southeast Alaska) of the range of this stock as currently designated. Because the total stock abundance estimates are more than eight years old (with the exception of the 2010–2012 abundance estimates provided for the inland waters of Southeast Alaska), and the frequency of incidental mortality and serious injury in U.S. commercial fisheries throughout Southeast Alaska is not known, the Southeast Alaska stock of harbor porpoise is classified as a strategic stock. Population trends and status of this stock relative to its Optimum Sustainable Population are currently unknown.

There are no subsistence use of this species; however, as noted above, entanglement in fishing gear contributes to human-caused mortality and serious injury. Muto *et al.* (2017a) also reports harbor porpoise are vulnerable to physical modifications of nearshore habitats resulting from urban and industrial development (including waste management and nonpoint source runoff) and activities such as construction of docks and other over-water structures, filling of shallow areas, dredging, and noise (Linnenschmidt *et al.,* 2013).

Information on harbor porpoise abundance and distribution in Tenakee Inlet has not been systematically collected. Anecdotal observations from marine mammal researchers indicate that harbor porpoise are seen a few times per month in groups of 3 to 5 individuals, but there is no seasonal trend to these observations (Dahlheim, M., pers. comm.).

Dall's Porpoise

Dall's porpoise are widely distributed across the entire North Pacific Ocean. They are found over the continental shelf adjacent to the slope and over deep (2,500$^{+}$ meters) oceanic waters (Hall 1979). They have been sighted throughout the North Pacific as far north as 65° N (Buckland *et al.,* 1993) and as far south as 28° N in the eastern North Pacific (Leatherwood and Fielding 1974). The only apparent distribution gaps in Alaska waters are upper Cook Inlet and the shallow eastern flats of the Bering Sea. Throughout most of the eastern North Pacific they are present during all months of the year, although there may be seasonal onshore-offshore movements along the west coast of the continental U.S. (Loeb 1972, Leatherwood and Fielding 1974) and winter movements of populations out of areas with ice such as Prince William Sound (Hall 1979).

There currently is no information on the presence or abundance of Dall's porpoises in Tenakee Inlet. Local

marine mammal experts indicate that the species is rarely seen near Tenakee Springs (Lewis, S., pers. comm.). Dall's porpoises likely occur more often in the deeper waters of Chatham Strait, although waters more than 600 feet (182 meters) deep are found within the central portion of Tenakee Inlet between Tenakee Springs and Chatham Strait (Figure 4–4). Average pod size in southeast Alaska ranges from three to six individuals (Dahlheim *et al.,* 2009). Dall's porpoise commonly ''bowride,'' or ride the wake created by large, relatively fast-moving vessels. It is possible that Dall's porpoises may bowride alongside a vessel into the project area, but we would not expect individuals to stay for long periods or congregate in the project area, nor to venture farther up Tenakee Inlet due to shallow water depths.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall et al. (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibels (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below in Table 4 (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):

TABLE 4—MARINE MAMMAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGE

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz (Best Hearing Range: 100 Hz to 8 kHz). |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales). | 150 Hz to 160 kHz (Best Hearing Range: 10 kHz to 100 kHz). |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* and *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz (Best Hearing Range: 1 kHz to 50 kHz). |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz (Best Hearing Range: 2 kHz to 48 kHz). |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. As previously discussed, seven marine mammal species (five cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as a mid-frequency cetaceans (*i.e.,* killer whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor and Dall's porpoise).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

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

*Description of Sound Sources*

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to one microPascal (μPa). One pascal is the pressure resulting from a force of one

newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and drilling. The sounds produced by these activities fall into one of two general sound 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.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) 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. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and

severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005). Drilling to insert the steel piles (not for tension anchors) will be operated by a down-hole hammer. A down-hole hammer is a drill bit that drills through the bedrock using a pulse mechanism that functions at the bottom of the hole. This pulsing bit breaks up rock to allow removal of debris and insertion of the pile. The head extends so that the drilling takes place below the pile. The pulsing sounds produced by the hammer method are continuous and reduces sound attenuation because the noise is primarily contained within the steel pile and below ground rather than impact hammer driving methods which occur at the top of the pile (R&M 2016).

*Acoustic Impacts*

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; Gotz *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 ADOT&PF's construction activities.

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 (*i.e.,* permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that ADOT&PF's activities may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.,* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974 found that inducing mild TTS (a 6-dB threshold shift) approximates TTS onset (*e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas),* harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis)* and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the

existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

In addition to PTS and TTS, there is a potential for 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. These impacts can 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). The AKOT & PF's activities do not involve the use of devices such as explosives or mid-frequency active 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 stranding events see, *e.g.,* Southall *et al.,* 2006; Jepson *et al.,* 2013; Wright *et al.,* 2013.

Behavioral effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud-pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark 2000; Costa *et al.,* 2003; Ng and Leung 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be

unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path because 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 (*Eschrictius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil 1997; Fritz *et al.,* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For

example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.,* Erbe 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

*Acoustic Effects, Underwater*

Potential Effects of DTH drilling and Pile Driving—The effects of sounds from DTH drilling and pile driving might include one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving or drilling on marine mammals are dependent on several factors, including the type and depth of the animal; the pile size and type, and the intensity and duration of the pile driving or drilling sound; the substrate; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving and DTH drilling activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the frequency, received level, and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock), which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species could be expected to include physiological and behavioral responses to the acoustic signature (Viada *et al.,* 2008). Potential effects from impulsive sound sources like pile driving can range in severity from effects such as behavioral disturbance to temporary or permanent hearing impairment (Yelverton *et al.,* 1973). Due to the nature of the pile driving sounds in the project, behavioral disturbance is the most likely effect from the proposed activity. Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shifts. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). Based on the best scientific information available, the SPLs for the construction activities in this project are below the thresholds that could cause TTS or the onset of PTS (Table 5 in Estimated Take Section).

*Non-Auditory Physiological Effects*—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving or removal to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected

(Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

*Disturbance Reactions*

Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short-term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals, and if so potentially on the stock or species, could potentially be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

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, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Longer-term habitat abandonment due to loss of desirable acoustic environment; and
- Longer-term cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

*Auditory Masking*

Natural and artificial sounds can disrupt behavior by masking. The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving and removal and DTH drilling is mostly concentrated at low-frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is low. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for DTH drilling and vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

*Acoustic Effects, Airborne*—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and DTH drilling that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple instances of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

*Anticipated Effects on Habitat*

The proposed activities at the project area would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area during the construction window. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The primary potential acoustic impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory and impact pile driving and removal and DTH drilling in the area. However, other potential impacts to the

surrounding habitat from physical disturbance are also possible.

*In-Water Construction Effects on Potential Prey (Fish)*

Construction activities would produce continuous (*i.e.,* vibratory pile driving and DTH drilling) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

*Pile Driving Effects on Potential Foraging Habitat*

The area likely impacted by the project is relatively small compared to the available habitat in Tenakee Inlet (*e.g.,* most of the impacted area is limited near the mouth of the inlet. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Tenakee Inlet.

The duration of the construction activities is relatively short. The construction window is for a maximum of 93 days and each day, construction activities would only occur for a few hours during the day. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, pile driving and drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving and drilling. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdowns—discussed in detail below in Proposed Mitigation section), Level A harassment is neither anticipated nor proposed to be authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

*Acoustic Thresholds*

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment for non-explosive sources*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns and impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

ADOT&PF's proposed activity includes the use of continuous (vibratory pile driving and drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

*Level A harassment for non-explosive sources*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) because of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and

peer reviewers to inform the final product, and are provided in Table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS onset acoustic thresholds [1] (received level) | |
|---|---|---|
| | Impulsive | Non-impulsive |
| Low-frequency cetaceans | $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB | $L_{E,LF,24h}$: 199 dB. |
| Mid-frequency cetaceans | $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB | $L_{E,MF,24h}$: 198 dB. |
| High-frequency cetaceans | $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB | $L_{E,HF,24h}$: 173 dB. |
| Phocid Pinnipeds (underwater) | $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB | $L_{E,PW,24h}$: 201 dB. |
| Otariid Pinnipeds (underwater) | $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB | $L_{E,OW,24h}$: 219 dB. |

[1] NMFS 2016.

Although ADOT&PF's construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and drilling) sources, the shutdown zones set by the applicant are large enough to ensure Level A harassment will be prevented. The level A zones for the proposed project are illustrated in Table 7. The highest level A zone shown (176 meters for high- and low-frequency cetaceans) is roughly 24 meters less than the total distance of the largest shutdown zone (200 meters for high- and low-frequency cetaceans). To assure the largest shutdown zone can be fully monitored, protected species observers (PSOs) will be positioned in the possible best vantage points during all piling/drilling activities to guarantee a shutdown if a high- and/or low-frequency cetacean approaches or enters the 200-meter shutdown zone. These measures are described in full detail below in the Proposed Mitigation and Monitoring Sections.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project, *i.e.,* impact pile driving, vibratory pile driving, and vibratory pile removal. Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth. An impact hammer would then generally be used to place the pile at its intended depth. The actual durations of each installation method vary depending on the type and size of the pile. An impact hammer is a steel device that works like a piston, producing a series of independent strikes to drive the pile. Impact hammering typically generates the loudest noise associated with pile installation. Factors that could potentially minimize the potential impacts of pile installation associated with the project include:

- The relatively shallow waters in the project area (Taylor *et al.,* 2008);
- Land forms around Tenakee Springs that would block the noise from spreading; and
- Vessel traffic and other commercial and industrial activities in the project area that contribute to elevated background noise levels.

In order to calculate distances to the Level A and Level B sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations (see Table 6). Note that piles of differing sizes have different sound source levels.

Empirical data from recent ADOT&PF sound source verification (SSV) studies at Ketchikan, Kodiak, and Auke Bay, Alaska were used to estimate sound source levels (SSLs) for vibratory, impact, and drilling installations of 30-inch steel pipe piles (MacGillivray *et al.,* 2016, Warner and Austin 2016b, Denes *et al.,* 2016a, respectively). These Alaskan construction sites were generally assumed to best represent the environmental conditions found in Tenakee and represent the nearest available source level data for 30-inch steel piles. Similarities among the sites include thin layers of soft sediments overlying a bedrock layer and comparable bedrock depths. However, the use of data from Alaska sites was not appropriate in all instances. Details are described below.

For vibratory driving of 24-inch steel piles, data from two Navy project locations in the state of Washington were reviewed. These include data from proxy sound source values at Navy installations in Puget Sound (Navy, 2015) and along the waterfront at Naval Base Kitsap (NBK), Bangor (Navy 2012). After assessing these two sources, ADOT&PF selected an average source level of 161 dB rms, which NMFS concurs with as an appropriate sound source. In addition, for a fourth project at NBK, Bangor, construction crews drove 16-inch hollow steel piles with measured levels similar to those for the 24-inch piles. Therefore, NMFS elects to use 161 dB rms as a source level for vibratory driving of 18-inch and 16-inch steel piles.

For vibratory driving of 14-inch steel and timber piles and 12.75-inch steel piles, ADOT&PF suggested a source level of 155 dB rms, which NMFS also concurs with. This source level was derived from summary data pertaining to vibratory driving of 18-inch steel piles in Kake, Alaska (MacGillivray 2015).

In their application, ADOT&PF derived source levels for impact driving of 30-inch steel piles by averaging the individual mean values associated with impact driving of the same size and type from Ketchikan (Warner and Austin 2016a). Mean values from Ketchikan were the most conservative dataset for 30-inch impact pile driving in Southeast Alaska. The average mean value from this dataset was 194.7 dB rms and 180.8 dB SEL.

For 24-inch impact pile driving, NMFS used data from a Navy (2015) study of proxy sound source values for use at Puget Sound military installations. The Navy study recommended a value of 193 dB rms and 181 dB SEL, which was derived from data generated by impact driving of 24-inch steel piles at the Bainbridge Island Ferry Terminal Preservation project and the Friday Harbor Restoration Ferry Terminal project. NMFS found this estimated source level to be appropriate.

For impact driving of 20, 18, and 14-inch steel piles, ADOT&PF used source levels of 186.6 dB, 158 dB, and 158 dB respectively. These source levels were derived from Caltrans SSV studies at the Stockton Wastewater Treatment Plant (20-inch) and Caltrans SSV studies at Prichard Lake Pumping Plant in Sacramento, CA (18 and 14-inch) (Caltrans 2015). In regards to the proposed drilling activities, a source level of 165 dB for all pile types originated from ADOT&PF SSV studies for piling operations in Kodiak, Alaska (Warner and Austin 2016b).

TABLE 6—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DRILLING, AND VIBRATORY PILE REMOVAL

| Method and pile type | Installation, removal, or proofing | Sound level at 10 meters | | | Literature source |
|---|---|---|---|---|---|
| | | dB rms | dB SEL | dB peak | |
| Vibratory Hammer: | | | | | |
| 30-inch steel piles | Install | 165.0 | | | Derived from Warner and Austin 2016a & Denes *et al.* 2016. |
| 24-inch steel piles | Install | 161.0 | | | Navy 2012, 2015. |
| 20-inch steel piles | Install | 161.0 | | | Navy 2012, 2015. |
| 18-inch steel piles | Remove, Install | 161.0 | | | Navy 2012, 2015. |
| 16-inch steel piles | Remove | 161.0 | | | Navy 2012, 2015. |
| 14-inch steel piles | Remove | 155.0 | | | MacGillivray *et al.* 2015. |
| 14-inch timber piles | Remove, Install | 155.0 | | | MacGillivray *et al.* 2015. |
| 12.75-inch steel piles | Remove | 155.0 | | | MacGillivray *et al.* 2015. |
| Drilling: | | | | | |
| 30-inch steel piles | Install | 165.0 | | | Derived from Warner and Austin 2016b. |
| 24-inch steel piles | Install | 165.0 | | | Derived from Warner and Austin 2016b. |
| 20-inch steel piles | Install | 165.0 | | | Derived from Warner and Austin 2016b. |
| 18-inch steel piles | Install | 165.0 | | | Derived from Warner and Austin 2016b. |
| Impact Hammer: | | | | | |
| 30-inch steel piles | Proofing | 194.7 | 180.8 | 208.6 | Warner and Austin 2016a. |
| 24-inch steel piles | Proofing | 193.0 | 181.0 | 210.0 | Navy 2015 (from 82 FR 31400). |
| 20-inch steel piles | Proofing | 186.5 | 175.5 | 207.0 | Caltrans 2015. |
| 18-inch steel piles | Proofing | 158.0 | | 174.0 | Caltrans 2015. |
| 14-inch timber piles | Install | 158.0 | | 174.0 | Caltrans 2015. |

The formula below is used to calculate underwater sound propagation. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log 10 (R^1/R^2)$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

NMFS typically recommends a default practical spreading loss of 15 dB tenfold increase in distance. ADOT&PF analyzed the available underwater acoustic data utilizing this metric.

When NMFS' Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving and drilling, NMFS' User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet and the resulting isopleths are reported in Tables 6 and 7.

TABLE 7—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

| Type of pile | Activity | Piles installed or removed per day | Level A harassment zone (meters) [1] | | | | | Level B harassment zone (meters), cetaceans and pinnipeds [2] |
|---|---|---|---|---|---|---|---|---|
| | | | Cetaceans | | | Pinnipeds | | |
| | | | LF | MF | HF | PW | OW | |
| **Vibratory (120 dB)** | | | | | | | | |
| 30-inch steel | Install [4] | 3 | 11 | 1 | 16 | 7 | 1 | 10,000 |

[1] The distance of the modeled SPL from the driven pile.

[2] The distance from the driven pile of the initial measurement.

TABLE 7—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL—Continued

| Type of pile | Activity | Piles installed or removed per day | Level A harassment zone (meters) [1] | | | | | Level B harassment zone (meters), cetaceans and pinnipeds [2] |
|---|---|---|---|---|---|---|---|---|
| | | | Cetaceans | | | Pinnipeds | | |
| | | | LF | MF | HF | PW | OW | |
| 24-inch steel, 20-inch steel, 18-inch steel. | Install [4] | 3 | 6 | 1 | 9 | 4 | 1 | 5,412 |
| 18-inch steel, 16-inch steel | Remove [4] | 10 | 13 | 2 | 19 | 8 | 1 | 5,412 |
| 14-inch steel, 14-inch timber, 12.75-inch steel. | Remove [5] | 10 | 5 | 1 | 8 | 3 | 1 | 2,154 |
| **Drilling (120 dB)** | | | | | | | | |
| 30-inch steel, 20-inch steel | Install [6] | 3 | 55 | 5 | 81 | 34 | 3 | 10,000 |
| 24-inch steel, 18-inch steel | Install [7] | 3 | 42 | 4 | 62 | 26 | 2 | 10,000 |
| **Impact (160 dB) [3]** | | | | | | | | |
| 30-inch steel | Proofing | 1 | 70 | 3 | 82 | 37 | 3 | 2,057 |
| | | 2 | 110 | 4 | 131 | 59 | 5 | |
| | | 3 | 144 | 6 | 171 | 77 | 6 | |
| 24-inch steel | Proofing | 1 | 71 | 3 | 85 | 38 | 3 | 1,585 |
| | | 2 | 113 | 4 | 135 | 61 | 5 | |
| | | 3 | 148 | 6 | 176 | 79 | 6 | |
| 20-inch steel | Proofing | 3 | 64 | 3 | 76 | 34 | 3 | 584 |
| 18-inch steel | Proofing | 3 | <1 | <1 | <1 | <1 | <1 | 7 |
| 14-inch timber | Install | 10 | <1 | <1 | <1 | <1 | <1 | 7 |

[1] Level A Isopleths Calculated Using NMFS' 2016 Acoustic User Spreadsheet. Source level set at a distance of 10 Meters, a weighting factor adjustment of 2kHz for impulse sources and 2.5kHz for continuous sources, and a propagation loss value of 15 LogR.
[2] Level B Isopleths Calculated using Practical Spreading Loss Model. Source level set at a distance of 10 meters and and a propagation loss value of 15 LogR.
[3] 30 Strikes per pile.
[4] 45 minute activity duration.
[5] 2.5 hour activity duration.
[6] 9 hour activity duration.
[7] 6 hour activity duration.

Pulse duration from the SSV studies described above are unknown. However, all necessary parameters were available for the SELcum (cumulative Single Strike Equivalent) method for calculating isopleths for 30-inch, 24-inch, and 20-inch impact piles. Therefore, this method was selected for those piles. To account for potential variations in daily productivity during impact installation, isopleths were calculated for different numbers of piles that could be installed each day (see Table 7). Should the contractor expect to install fewer piles in a day than the maximum anticipated, a smaller Level A shutdown zone would be employed to monitor take.

To derive Level A harassment isopleths associated with impact driving 30-inch steel piles, ADOT&PF utilized a single strike SEL of 180.8 dB and assumed 30 strikes per pile for 1 to 3 piles per day. For 24-inch and 20-inch steel piles, ADOT&PF used a single strike SEL of 181 dB SEL and 175.5 SEL respectively, also assuming 30 strikes at a rate of 1 to 3 piles per day. To calculate Level A harassment isopleths associated with impact piling 18-inch and 14-inch steel/timber piles, a source level (rms SPL) of 158dB was used with a pulse duration of .05 seconds.

To calculate Level A harassment for vibratory driving of 30-inch piles, ADOT&PF utilized a source level (rms SPL) of 165 dB and assumed 45 minutes of driving per day. For installing 24, 20, and 18-inch piles, ADOT&PF used a source level of 161 dB and assumed up to 45 minutes of driving per day. For removal of 18 and 16-inch piles, ADOT&PF assumed use of 18-inch piles and used the same source level of 161 dB for up to 45 minutes. Level A harassment for the installation/removal of piles 14-inches and under in diameter used a source level of 155 dB rms and assumed 2.5 hours of driving/removal a day. In regards to Level A for drilling, a source level of 165 dB rms was used for all pile types with varying levels of activity for each pile type (see Tables 1 & 2 for information on drilling duration and max number of piles drilled each day). Results for all Level A isopleths are shown in Table 7. Isopleths for Level B harassment associated with impact (160 dB) and vibratory harassment (120 dB) were also calculated and are included in Table 7.

It is important to note that the actual area ensonified by pile driving activities is constrained by local topography relative to the total threshold radius (particularly for the Level B ensonified zones). The actual ensonified area was determined using a straight line-of-sight projection from the anticipated pile driving locations. Overall, Level A harassment zones for impact installation are relatively small because of the few strikes required to proof the piles. The maximum aquatic areas ensonified within the Level A harassment isopleths do not exceed 0.1 square km (see Figures 6–1 and Figure 6–2 in application). The corresponding areas of the Level B ensonified zones for impact driving and vibratory installation/removal are shown in Table 8 below.

TABLE 8—CALCULATED AREAS ENSONIFIED WITHIN LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

| Type of pile | Activity | Level B harassment zone ($km^2$), cetaceans and pinnipeds |
|---|---|---|
| **Vibratory (120 dB)** | | |
| 30-inch steel | Install | 78.9 |
| 24-, 20-, 18-, and 16-inch steel | Install | 45.3 |
| 14-, 12.75-inch steel, and 14-inch timber | Remove | 7.3 |
| **Drilling (120 dB)** | | |
| 30-, 24-, 20-, and 18-inch steel | Install | 78.9 |
| **Impact (160 dB)** | | |
| 30-inch steel | Proofing | 6.7 |
| 24-inch steel | Proofing | 4.0 |
| 20-inch steel | Proofing | 0.6 |
| 18-inch steel | Proofing | <0.1 |
| 14-inch timber | Install | <0.1 |

*Marine Mammal Occurrence and Final Take Estimates*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact and vibratory pile driving noise for each threshold were estimated using local marine mammal density datasets where available and local observational data. As previously stated, only Level B take will be considered for this action as Level A take will be avoided via mitigation (see Mitigation and Monitoring Sections). As presented in Table 7, the largest Level A zone for the project is 176 meters for high- and low-frequency cetaceans. As a result, the shutdown zone (which is described in detail in the Proposed Mitigation Section) for these activities will be 200 meters for high- and low-frequency cetaceans. Level B take is calculated differently for some species based on differences in density, year-round habitat use, and other contextual factors. See below for specific methodologies by species.

Steller Sea Lions

Steller sea lion abundance in the project area is highly seasonal in nature with sea lions being most active between October and March (Figure 4–2). Level B exposure estimates are conservatively based on the average winter (October to March) abundance of 140 sea lions at the Tenakee Cannery haulout, which is 8.9 km away from the project site (Jemison, 2017, unpublished data). However, it is unlikely that the entire Steller sea lion population from the Tenakee Cannery haulout would forage to the west near the Tenakee Springs ferry terminal. Additionally, Steller sea lions do not generally forage every day, but tend to forage every 1–2 days and return to haulouts to rest between foraging trips (Merrick and Loughlin 1997; Rehburg *et al.,* 2009). Overall, this information indicates that only half of the Steller sea lions at the Tenakee Cannery haulout (*i.e.,* average of 140 during winter) is likely to approach the project site on any given day and be exposed to sound levels that constitute behavioral harassment. As a result, an estimated 70 individuals is a conservative estimate of the number of Steller sea lions likely to forage in the underwater behavioral harassment zone on a given day. Therefore: 70 Steller sea lions per day * 93 days of potential exposure = 6,510 potential exposures.

To assign take to the eDPS and wDPS stocks of Steller sea lions, data from researchers at NMFS' Alaska Fisheries Science Center were used. Researchers at NMFS' Alaska Fisheries Science Center state that roughly 17.8 percent of Steller sea lions at the Tenakee Cannery Point haulout are members of the wDPS whereas 82.2 percent are from the eDPS (L. Fritz, pers. comm; L. Fritz, unpublished data). Therefore, it is estimated that only 1,159 takes (17.8 percent of 6,510) have the potential to occur for wDPS Steller sea lions and 5,351 (82.2 percent of 6,510) takes have the potential to occur for eDPS Steller sea lions. In addition, since there is only an average of 140 Steller sea lions located at the Tenakee Cannery haulout, it is predicted that only 115 (82.2 percent of 140) individuals from the eDPS and 25 (17.8 percent of 140) individuals from the wDPS have the potential to be harassed.

Harbor Seals

Harbor seals are non-migratory; therefore, the exposure estimates are not dependent on season. We anticipate Level B harbor seal take to be relatively high, given the presence of three established haulouts within the largest (ten km) Level B harassment zone of the project site. The best available abundance estimate for Tenakee Inlet is 259 individual harbor seals (London, J., pers. comm.).

The number of harbor seals that could potentially be exposed to elevated sound levels for the project was estimated by calculating the percentage of available harbor seal habitat within the largest Level B harassment zone. Of the 233.35 square km of available habitat in Tenakee Inlet, 78.9 square km or 33.82 percent will be within the largest Level B harassment zone. Of the 259 harbor seals that haul out in the Inlet, approximately 87.57 harbor seals (33.82 percent of 259 individuals) could be within the Level B harassment zone and exposed to sound levels that reach the Level B threshold each day. Therefore: 87.57 harbor seals per day * 93 days of potential exposure = 8,144 potential exposures.

Harbor Porpoises

Harbor porpoises are non-migratory; therefore, our exposure estimates are not dependent on season. Harbor porpoise surveys conducted in southeast Alaska during the summers of 1991–1993, 2006, 2007, and 2010–2012 included

Chatham Strait (near the action area). The average density estimate for all survey years in Chatham Strait was 0.013 harbor porpoise per square km (Dahlheim *et al.,* 2015). Surveys in 1997, 1998, and 1999 reported an average harbor porpoise density of .033 per square km in Southeast Alaska (Hobbs and Waite 2010). Based on a more conservative density estimate of 0.033 harbor porpoise per square km in Southeast Alaska, we estimate that approximately 2.6 (.033*78.9) harbor porpoises could occur daily within the 78.9 square km (Table 8) Level B harassment zone. Therefore: 2.6 harbor porpoises per day * 93 days of potential exposure = 242 potential exposures.

Dall's Porpoises

Dall's porpoise are non-migratory; therefore, our exposure estimates are not dependent on season. Based on anecdotal evidence citing rare occurrences of the species in the action area, we anticipate approximately one observation of a Dall's porpoise pod in the Level B harassment zone each week during construction (Lewis, S., pers. comm.). Based on an average pod size of 3.7 (Wade *et al.,* 2003), we estimate 49 Dall's porpoise could be exposed to Level B harassment noise during the 93 day construction period (*i.e.,* 3.7 individuals per week * 13.2 weeks of potential exposure = 48.84 (rounded up to 49) total potential exposures).

Killer Whales

Local marine mammal experts indicate that approximately one killer whale pod is observed in Tenakee Inlet each month, year-round (Lewis, S., pers. comm.). It is assumed that all three killer whale stocks are equally likely to occur in the area because no data exist on relative abundance of the three stocks in Tenakee Inlet. The exposure estimate is conservatively based on a resident pod size, which has been quantified and is known to be larger than other stocks. Resident killer whales occur in a mean group size of 19.3 during the fall in southeast Alaska (Dahlheim *et al.,* 2009). Therefore, we assume that a total of approximately 60 killer whales could be exposed to Level B harassment over the course of the project (*i.e.,* [19.3 individuals per pod * 1 pods per month] * 3.1 months = 59.83 [rounded up to 60]). Since there are no data that exist for killer stocks in Tenakee Inlet, 60 Level B takes were applied to each stock.

Humpback whales are present in Tenakee Inlet year-round. Local experts indicate that as many as 12 humpback whales are present on some days from spring through fall, with lower numbers during the winter (S. Lewis and M. Dahlheim, pers. comm.). We conservatively estimate that half of those, or six individuals on average, could be exposed to Level B harassment during each day of pile installation and removal, therefore:

6 humpback whales per day * 93 days of exposure = 558 potential exposures.

Minke Whales

Minke whales may be present in Tenakee Inlet year-round. Their abundance throughout southeast Alaska is very low, and anecdotal reports have not included minke whales near the project area. However, minke whales are distributed throughout a wide variety of habitats and could occur near the project area. Therefore, we conservatively estimate that one minke whale could be exposed to Level B harassment each month during construction or a total of three minke whales during the 93-day construction period.

**Proposed Mitigation**

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, ADOT&PF will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B take has not been requested, in-water pile installation/removal and drilling will shut down immediately when the animals are sighted;
- If Level B take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B zone to avoid additional take of them.

The following measures would apply to ADOT&PFs mitigation requirements:

*Establishment of Shutdown Zone for Level A*—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). A conservative shutdown zone of 100 meters will be used during monitoring to prevent any form of incidental Level A exposure for most species. However, during impact installation of 24-inch

and 30-inch steel piles at a frequency of 2 or 3 piles per day, the Level A harassment zone exceeds the 100-meter shutdown zone for low- and high-frequency cetaceans (*i.e.,* humpback whales, harbor porpoises, and Dall's porpoises; see Table 7). During these activities, PSOs will implement a 200-meter shutdown zone to avoid take of harbor porpoises, Dall's porpoises, minke whales, and humpback whales (low- and high-frequency cetaceans). The placement of PSOs during all pile driving and drilling activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure that the 200-meter shutdown zone is visible during impact installation of 24-inch and 30-inch steel piles at a frequency of two or three piles per day. Nonetheless, a 100-meter shutdown will be implemented for Steller sea lions, harbor seals, and killer whales during all activities.

*Establishment of Monitoring Zones for Level B*—ADOT&PF will establish Level B disturbance zones or zones of influence (ZOI) which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The Level B zones are depicted in Table 7. As shown, the largest Level B zone is equal to 78.9 $km^2$, making it impossible for the PSOs to view the entire harassment area. Due to this, Level B exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.

*Soft Start*—The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at 40 percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving and removal activities.

*Pre-Activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the observer will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 30 minutes (for cetaceans) and 15 minutes (for pinnipeds). If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B zone. When a marine mammal permitted for Level B take is present in the Level B harassment zone, piling activities may begin and Level B take will be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone will commence.

**Proposed Monitoring and Reporting**

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

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

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

*Visual Monitoring*

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving and removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

PSOs would be land-based observers. A primary PSO would be placed at the terminal where pile driving would occur. A second observer would range the uplands on foot or by ATV via Tenakee Ave., and go from Grave Point east of the harbor up and west of the project site to get a full view of the Level A zone and as much of the Level B zone as possible. PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

• 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.

• Independent observers (*i.e.,* not construction personnel).

• Observers must have their CVs/resumes submitted to and approved by NMFS.

• Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute education or training for experience.

• Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

• At least one observer must have prior experience working as an observer.

• Experience or training in the field identification of marine mammals, including the identification of behaviors.

• Sufficient training, orientation, or experience with the construction 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; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior.

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* percent cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, ADOT&PF would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

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

In the event that ADOT&PF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), ADOT&PF would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with ADOT&PF to determine whether modifications in the activities are appropriate.

In the event that ADOT&PF discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. ADOT&PF would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As stated in the proposed mitigation section, shutdown zones equal to or exceeding Level A isopleths shown in Table 7 will be implemented, and in this case, Level A take is not anticipated nor authorized. Behavioral responses of marine mammals to pile driving and removal at the ferry terminal, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving, removal, and drilling would occur for 93 days, any harassment would be temporary. In addition, the project was designed with relatively small-diameter piles, which will avoid the elevated noise impacts associated with larger piles. In addition, there are no known biologically important areas near the project zone that would be moderately or significantly impacted by the construction activities. The region of Tenakee Inlet where the project will take place is located in a developed area with regular marine vessel traffic. Although there is a harbor seal haulout approximately one kilometer south of the project site, it would not be located within the project's Level B zone.

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

- No mortality is anticipated or authorized.
- There are no known biologically important areas within the project area.
- ADOT&PF would implement mitigation measures such as vibratory driving piles to the maximum extent practicable, soft-starts, and shut downs.
- Monitoring reports from similar work in Alaska have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Overall, ADOT&PF proposes 15,566 total Level B takes of these marine mammals. Table 9 below shows take as a percent of population for each of the species listed above.

TABLE 9—SUMMARY OF THE ESTIMATED NUMBERS OF MARINE MAMMALS POTENTIALLY EXPOSED TO LEVEL B HARASSMENT SOUND LEVELS

| Species | DPS/stock | Proposed number of exposures to level B harassment total and by stock | Proposed number of individuals potentially exposed to level B harassment | Stock abundance | Percent of population [1] |
|---|---|---|---|---|---|
| Steller sea lion | Eastern DPS | 5,351 | 115 individuals | 41,638 | <0.3 |
| | Western DPS | 1,159 | 25 individuals | 53,303 | <0.1 |
| Harbor seal | Glacier Bay/Icy Strait | 8,144 | 259 individuals | 7,210 | 3.6 |
| Harbor porpoise | Southeast Alaska | 242 | 242 | 975 | 24.8 |
| Dall's porpoise | Alaska | 49 | 49 | 83,400 | <0.1 |
| Killer whale | West Coast transient | 60 | 60 | 243 | 24.7 |
| | Alaska resident | 60 | 60 | 2,347 | 2.6 |
| | Northern Resident | 60 | 60 | 290 | 20.7 |
| Humpback whale | Mexico DPS/Central North Pacific. | 558 | 558 | 10,103 | 5.5 |
| Minke whale | Alaska | 3 | 3 | N/A | N/A |
| Total | | 15,686 | 1,434 | N/A | N/A |

[1] The percent of population is based on the proportion of take that is expected to occur from each stock based on abundance (see Table 3). Killer whale stocks are assumed to be equally likely to occur.

N/A: Not Applicable or no stock population assessment is available.

Table 9 presents the number of animals that could be exposed to received noise levels causing Level B harassment for the proposed work at the Tenakee Springs Ferry Terminal. Our analysis shows that less than 25 percent of each affected stock could be taken by harassment. Therefore, the numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds, especially harbor seals and Steller sea lions, occurring in the vicinity of the project site, there will almost certainly be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock. For harbor porpoise, the abundance estimates used in the percentage of population were taken from inland Southeast Alaska waters. These abundance estimates have not been corrected for g(0) and are likely conservative, therefore it is expected for the proposed percentage of population that will be taken to be overestimated. In addition, high percentage totals for northern resident (20.7 percent) and western transient (24.7 percent) killer whales were based on the possibility that all 60 takes for killer whales would

occur for each stock, which is a highly unlikely scenario.

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

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes. The proposed project is not known to occur in an important subsistence hunting area. It is a developed area with regular marine vessel traffic. However, DOT&PF plans to provide advanced public notice of construction activities to reduce construction impacts on local residents, ferry travelers, adjacent businesses, and other users of the Tenakee Springs ferry terminal and nearby areas. This will include notification to local Alaska Native tribes that may have members who hunt marine mammals for subsistence. Of the marine mammals considered in this IHA application, only harbor seals are known to be used for subsistence in the project area. If any tribes express concerns regarding project impacts to subsistence hunting of marine mammals, further communication between will take place, including provision of any project information, and clarification of any mitigation and minimization measures that may reduce potential impacts to marine mammals.

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

**Endangered Species Act (ESA)**

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

NMFS is proposing to authorize take of western DPS Steller sea lions and Mexico DPS humpback whales, which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with NMFS' Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ADOT&PF for conducting piling and drilling activities associated with improvements at the Tenakee Springs city dock and ferry terminal, in Tenakee Springs, Alaska provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from June 1, 2019 to May 31, 2020.

2. This IHA is valid only for in-water construction activities associated with improvements at the Tenakee Springs city dock and ferry terminal, in Tenakee Springs, Alaska.

3. General Conditions.

(a) A copy of this IHA must be in the possession of the ADOT&PF, its designees, work crew, and marine mammal monitoring personnel operating under the authority of this IHA.

(b) The species authorized for taking are humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), Harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Steller sea lion (*Eumetopias jubatus*), and harbor seal (*Phoca vitulina*) and minke whale (*Balaenoptera acutorostrata*).

(c) The taking, by Level B harassment only, is limited to the species/stocks listed in condition 3(b). See Table 1 for numbers of take authorized.

(d) For those marine mammals for which Level B take has not been requested, in-water pile installation/removal and drilling shall shut down immediately when the animals are sighted.

(e) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(f) ADOT&PF shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and ADOT&PF staff prior to the start of all piling and drilling activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(g) Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted.

4. Mitigation Measures.

The holder of this Authorization is required to implement the following mitigation measures:

(a) Shutdown Measures.

(i) For all pile driving/removal and drilling activities, ADOT&PF shall implement shutdown measures in which operations shall cease if a marine mammal enters or approaches a shutdown zone for which it is not permitted to be in during piling or drilling operations. Shutdown zones are defined below.

(ii) For all impact pile driving, vibratory pile driving/removal, and drilling the ADOT&PF shall implement a minimum shutdown zone of 100 meters around each pile (undergoing piling/drilling activities) for all species authorized for Level B take.

(iii) ADOT&PF shall implement a 200-meter radius shutdown zone for high- and low-frequency cetaceans (harbor porpoises, Dall's porpoises, minke whales, and humpback whales) during impact installation of 24-inch and 30-inch steel piles at a frequency of two or three piles per day.

(iv) ADOT&PF shall implement shutdown measures if the number of any allotted marine mammal Level B takes reaches the limit under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching their respective Level A or Level B harassment zone.

(v) If a marine mammal comes within 10 meters of in-water, heavy machinery work other than pile driving or drilling (*e.g.,* standard barges, tugboats), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(b) ADOT&PF shall establish Level A and Level B harassment zones as shown in Tables 2 and 3.

(c) Soft Start for Impact Pile Driving

(i) At the start of any pile driving activities or when there has been downtime of 30 minutes or more without impact pile driving, the contractor shall initiate the driving with ramp-up procedures described below.

(ii) Soft start for impact hammers requires contractors to provide an initial set of strikes from the impact hammer at 40 percent energy, followed by no less than a 30-second waiting period. This procedure shall be conducted three times before impact pile driving begins.

(d) Use the minimum hammer energy needed to install piles.

(e) Drive piles with a vibratory hammer to the maximum extent practicable.

5. Monitoring.

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving/removal and drilling activities. Monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) Pre-Activity Monitoring.

(i) Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the observer(s) shall observe the shutdown and monitoring zones for a period of 30 minutes.

(ii) The shutdown zone shall be cleared when a marine mammal has not been observed within that zone for that 30-minute period.

(iii) If a marine mammal is observed within the shutdown zone, a soft-start can proceed if the animal is observed leaving the zone or has not been observed for 30 minutes (for cetaceans) or 15 minutes (for pinnipeds), even if visibility of Level B zone is impaired.

(iv) If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, in-water construction can commence and work can continue even if visibility becomes impaired within the Level B zone.

(v) When a marine mammal permitted for Level B take is present in the Level B harassment zone, piling and drilling activities may begin and or continue and Level B take shall be recorded.

(vi) If the entire Level B zone is not visible while work continues, exposures shall be recorded and extrapolated based upon the amount of total observed exposures and the percentage of the Level B zone that was not visible.

(b) Monitoring shall be conducted by qualified protected species observers (PSOs), with minimum qualifications as described previously in the *Monitoring and Reporting* section.

(i) Two observers shall be on site to actively observe the shutdown and disturbance zones during all pile driving, removal, and drilling.

(ii) Observers shall use their naked eye with the aid of binoculars, and/or a spotting scope during all pile driving and extraction activities.

(iii) Monitoring location(s) shall be identified with the following characteristics:

1. Unobstructed view of pile being driven;

2. Unobstructed view of all water within the Level A zone (if applicable) and as much of the Level B harassment zone as possible for piles being driven.

(c) If waters exceed a sea-state, which restricts the PSOs ability to observe within the marine mammal shutdown zone (*e.g.,* excessive wind or fog), pile installation and removal shall cease. Pile driving shall not be initiated until the entire shutdown zone is visible.

(d) Marine mammal location shall be determined using a rangefinder and a GPS or compass.

(e) Ongoing in-water pile installation may be continued during periods when conditions such as low light, darkness, high sea state, fog, ice, rain, glare, or other conditions prevent effective marine mammal monitoring of the entire Level B harassment zone. PSOs would continue to monitor the visible portion of the Level B harassment zone throughout the duration of driving activities.

(f) Post-construction monitoring shall be conducted for 30 minutes beyond the cessation of piling and drilling activities at end of day.

6. Reporting.

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the completion of marine mammal monitoring. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed, including the total number extrapolated from observed animals across the entirety of relevant monitoring zones A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the following:

(i) Date and time a monitored activity begins or ends;

(ii) Construction activities occurring during each observation period;

(iii) Record of implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any;

(iv) Weather parameters (*e.g.,* percent cover, visibility);

(v) Water conditions (*e.g.,* sea state, tide state);

(vi) Species, numbers, and, if possible, sex and age class of marine mammals;

(vii) Description of any observable marine mammal behavior patterns;

(viii) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(ix) Locations of all marine mammal observations; and

(x) Other human activity in the area.

(b) Reporting injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, ADOT&PF shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301–427–8401), NMFS, and the Alaska Regional Stranding Coordinator (907–271–1332), NMFS. The report must include the following information:

1. Time and date of the incident;

2. Description of the incident;

3. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;

5. Species identification or description of the animal(s) involved;

6. Fate of the animal(s); and

7. 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 shall work with ADOT&PF to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ADOT&PF may not resume their activities until notified by NMFS.

(ii) In the event that ADOT&PF 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), ADOT&PF shall immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS shall work with ADOT&PF to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that ADOT&PF 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 activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF shall report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. ADOT&PF shall provide photographs, 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.

TABLE 1—AUTHORIZED TAKE NUMBERS, BY SPECIES/STOCKS

| Species | DPS/stock | Level A takes | Level B takes |
|---|---|---|---|
| Steller sea | Eastern DPS | 0 | 115 |
| lion | Western DPS | | 25 |
| Harbor seal | Glacier Bay/Icy Strait | 0 | 259 |
| Harbor porpoise | Southeast Alaska | 0 | 242 |
| Dall's porpoise | Alaska | 0 | 49 |
| Killer whale | West Coast transient | 0 | 60 |
| | Alaska resident | | 60 |
| | Northern Resident | | 60 |
| Humpback whale | Mexico DPS/Central North Pacific | 0 | 558 |
| Minke whale | Alaska | | 3 |
| Total | | 0 | 1,431 |

TABLE 2—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

| Type of pile | Activity | Piles installed or removed per day | Level A harassment zone (meters) | | | | | Level B harassment zone (meters), cetaceans and pinnipeds |
|---|---|---|---|---|---|---|---|---|
| | | | Cetaceans | | | Pinnipeds | | |
| | | | LF | MF | HF | PW | OW | |
| **Vibratory (120 dB)** | | | | | | | | |
| 30-inch steel | Install | 3 | 11 | 1 | 16 | 7 | 1 | 10,000 |
| 24-inch steel, 20-inch steel, 18-inch steel | Install | 3 | 6 | 1 | 9 | 4 | 1 | 5,412 |
| 18-inch steel, 16-inch steel | Remove | 10 | 13 | 2 | 19 | 8 | 1 | 5,412 |
| 14-inch steel, 14-inch timber, 12.75-inch steel. | Remove | 10 | 5 | 1 | 8 | 3 | 1 | 2,154 |
| **Drilling (120 dB)** | | | | | | | | |
| 30-inch steel, 20-inch steel | Install | 3 | 55 | 5 | 81 | 34 | 3 | 10,000 |
| 24-inch steel, 18-inch steel | Install | 3 | 42 | 4 | 62 | 26 | 2 | 10,000 |
| **Impact (160 dB)** | | | | | | | | |
| 30-inch steel | Proofing | 1 | 70 | 3 | 82 | 37 | 3 | 2,057 |
| | | 2 | 110 | 4 | 131 | 59 | 5 | |
| | | 3 | 144 | 6 | 171 | 77 | 6 | |
| 24-inch steel | Proofing | 1 | 71 | 3 | 85 | 38 | 3 | 1,585 |
| | | 2 | 113 | 4 | 135 | 61 | 5 | |
| | | 3 | 148 | 6 | 176 | 79 | 6 | |
| 20-inch steel | Proofing | 3 | 64 | 3 | 76 | 34 | 3 | 584 |
| 18-inch steel | Proofing | 3 | <1 | <1 | <1 | <1 | <1 | 7 |
| 14-inch timber | Install | 10 | <1 | <1 | <1 | <1 | <1 | 7 |

TABLE 3—CALCULATED AREAS ENSONIFIED WITHIN LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

| Type of pile | Activity | Level B harassment zone (km$^2$), cetaceans and pinnipeds |
|---|---|---|
| **Vibratory (120 dB)** | | |
| 30-inch steel | Install | 78.9 |
| 24-, 20-, 18-, and 16-inch steel | Install | 45.3 |
| 14-, 12.75-inch steel, and 14-inch timber | Remove | 7.3 |
| **Drilling (120 dB)** | | |
| 30-, 24-, 20-, and 18-inch steel | Install | 78.9 |
| **Impact (160 dB)** | | |
| 30-inch steel | Proofing | 6.7 |
| 24-inch steel | Proofing | 4.0 |
| 20-inch steel | Proofing | 0.6 |
| 18-inch steel | Proofing | <0.1 |
| 14-inch timber | Install | <0.1 |

**Request for Public Comments**

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed [action]. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: March 14, 2018.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2018–05559 Filed 3–19–18; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agricultural Advisory Committee

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) announces that on Thursday, April 5, 2018, from 9:00 a.m. to 12:00 p.m., the Agricultural Advisory Committee (AAC) will hold a public meeting in Overland Park, Kansas. At this meeting, the AAC will discuss items related to price discovery and risk management in agricultural markets.

**DATES:** The meeting will be held on Thursday, April 5, 2018, from 9:00 a.m. to 12:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by April 12, 2018.

**ADDRESSES:** The meeting will take place at the Sheraton Overland Park Convention Center at 6100 College Boulevard, Overland Park, Kansas 66211. You may submit public comments, identified by ''Agricultural Advisory Committee,'' by any of the following methods:

- *CFTC website: https://comments.cftc.gov.* Follow the instructions to Submit Comments through the website.
- *Mail:* Send comments to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Charlie Thornton, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5500.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by webinar. The meeting agenda may change to accommodate other AAC priorities. For agenda updates and instructions to access the meeting as a webinar (forthcoming), please visit the AAC committee site at: *http://www.cftc.gov/About/CFTCCommittees/Agricultural Advisory/aac_meetings.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website.

The public meeting is physically accessible to people with disabilities. Persons requiring special accommodations to attend the meeting such as sign language interpretation or other ancillary aids because of a disability are asked to notify the contact person above at least ten (10) days in advance of the meeting.

Dated: March 15, 2018.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

(Authority: 5 U.S.C. app. 2 § 10(a)(2)).

[FR Doc. 2018–05614 Filed 3–19–18; 8:45 am]

**BILLING CODE 6351–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2018–0005]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Survey on Smoke and Carbon Monoxide Alarms

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission (CPSC or Commission) is announcing an opportunity for public

comment on a new proposed collection of information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** for each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey that will estimate the use of smoke and carbon monoxide (CO) alarms in United States households.

**DATES:** Submit written or electronic comments on the collection of information by May 21, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2018–0005, by any of the following methods:

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

*Written Submissions:* Submit written submissions in the following way: Mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

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

*Docket:* For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2018–0005, into the ''Search'' box, and follow the prompts. A copy of the draft survey is available at: *http://www.regulations.gov* under Docket No. CPSC–2018–0005, Supporting and Related Material.

**FOR FURTHER INFORMATION CONTACT:** Charu Krishnan, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7221, or by email to: *CKrishnan@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency surveys. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. Accordingly, CPSC is publishing notice of the proposed collection of information set forth in this document.

## A. Smoke and Carbon Monoxide (CO) Alarms Survey

The Commission is authorized under section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies, and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

In 1992, the CPSC sponsored a national in-home survey to collect information on the number of residential smoke alarms in actual use in homes and to evaluate the operability of the sampled alarms. The results were published in the 1994 report, *Consumer Product Safety Commission Smoke Detector Operability Survey Report on Findings.*[1] Although the survey results were instrumental for many years in developing state and local codes and standards related to smoke alarms, subsequent changes in technology, installation codes, and state/local ordinances in the past 25 years have rendered the information outdated and less effective. Stakeholders' groups for fire loss prevention have identified a need for an updated national survey to increase the installation and maintenance of smoke alarms in the United States. In addition, installations of CO alarms have increased since 1992. Accordingly, CPSC seeks to update its data information collection related to smoke and CO alarm use through a new survey.

CPSC has entered into a contract with Eureka Facts to conduct a national in-home survey that will estimate the use and functionality of smoke and CO alarms in households, as well as user hazard perceptions regarding such alarms. The information collected from this survey will provide CPSC updated national estimates regarding the use of smoke alarms and CO alarms in households based on direct observation of alarm installations. The survey also will help CPSC identify the groups that do not have operable smoke alarms and/or CO alarms and the reasons they do not have such alarms. With this information, CPSC will be able to target better its messaging to improve consumer use and awareness regarding the operability of these alarms. In addition, the survey results will help to inform CPSC's recommendations to voluntary standards groups and state/local jurisdictions regarding their codes, standards, and/or regulations on smoke and CO alarms.

The survey seeks to collect information from 1,185 households within the United States, with an initial group of 50 households that will be processed and analyzed to identify any issues regarding the survey instrument and data collection procedures. The survey will use a mixed-mode, multistage approach to data collection. The data will be collected through two modes: Face-to-face, in-home interviews, and telephone surveys. The survey instrument will be programmed on Vovici software and will be administered via in-home interviews using a Computer-Assisted Personal Interview (CAPI) format, or by telephone, using a Computer-Assisted Telephone Interview (CATI) format.

Smoke alarms are more prevalent in homes than CO alarms are. Accordingly, during the screening process, if respondents indicate that they have a smoke alarm that may be tested directly, the respondents will be scheduled for an in-home interview for the full survey. However, if the smoke alarm cannot be tested directly because the household does not have a smoke alarm installed, or the smoke alarms are connected to a central alarm system that will notify the police or fire department, the respondent is not eligible for the in-home survey. Instead of the in-home survey, these households would be given a subset of survey questions about safety attitudes and demographics that would be collected over the telephone. For participants eligible for in-home interviews, a two-member survey team will ask household residents questions

[1] Charles L. Smith, *Smoke Detector Operability Survey—Report on Findings,* (Bethesda, MD: CPSC, November 1993).

related to installed smoke and CO alarms. The survey team will then test residents' smoke and CO alarms. If any of the alarms do not work, the survey team will offer to replace them free of charge.

**B. Burden Hours**

The survey interview will take between 20 to 60 minutes, depending on whether the survey is administered via the telephone (about 20 minutes) or by an in-home interview (60 minutes). We estimate the number of respondents to be 1,185. We estimate the total annual burden hours for respondents to be 1,422 hours based on the total time required to respond to the invitation, screener, and the actual survey. The monetized hourly cost is $35.64, as defined by the average total hourly cost to employers for employee compensation for employees across all occupations as of September 2017, reported by the Bureau of Labor Statistics. Accordingly, we estimate the total annual cost burden to all respondents to be $50,680. (1,422 hours × $35.64 = $50,680.). The total cost to the federal government for the contract to design and conduct the survey is $721,773.

**C. Request for Comments**

The CPSC invites comments on these topics:

- Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- The accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2018–05554 Filed 3–19–18; 8:45 am]

BILLING CODE P

## DEPARTMENT OF DEFENSE

### Office of the Department of the Navy

### Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College; Notice of Federal Advisory Committee Meeting

**AGENCY:** Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College, Department of the Navy, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College, Board of Advisors (BOA) to The President of the Naval Postgraduate School (NPS) Subcommittee will take place.

**DATES:** Day 1—Open to the public, Wednesday, April 25, 2018 from 8:00 a.m. to 4:30 p.m. Day 2—Open to the public, Thursday, April 26, 2018 from 7:30 a.m. to 4:40 p.m. Pacific Time Zone.

**ADDRESSES:** The meeting will be held at the Naval Postgraduate School, Executive Briefing Center, Herrmann Hall, 1 University Circle, Monterey, CA.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn (Jaye) Panza, 831–656–2514 (Voice), 831–656–2789 (Facsimile), *jpanza@nps.edu* (Email). Mailing address is Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001. Website: *https://my.nps.edu/web/board-of-advisors/home.* The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

*Purpose of the Meeting:* The purpose of the Board is to advise and assist the President, NPS, in educational and support areas, providing independent advice and recommendations on items such as, but not limited to, organizational management, curricula, methods of instruction, facilities, and other matters of interest.

*Agenda:* The agenda for Wednesday is as follows: 8:00 a.m.–8:30 a.m.: Welcome/Administrative Business, 8:30 a.m.–8:45 a.m.: Annual Ethics Update, 8:45 a.m.–9:45 a.m.: President's Update, 10:00 a.m.–11:00 a.m. :Provost's Update, 11:00 a.m.–11:45 a.m.: Meet with Faculty/Deans, 12:00 p.m.–1:00 p.m.: Meet with Students, 1:15 p.m.–2:30 p.m.: Campus Tour Classroom/Labs, 2:45 p.m.–3:45 p.m.: Board Discussion, 3:45 p.m.–4:30 p.m.: NPS Foundation Update. The agenda for Thursday is as follows: 7:30 a.m.–8:30 a.m.: Meet with faculty, 8:45 a.m.–9:45 a.m.: Professional Education Program Discussion, 10:00 a.m.–11:00 a.m.: Facilities Update, 11:15 a.m.–12:00 p.m.: Board Discussion, 12:00 p.m.–1:30 p.m.: Personal Time, 1:30 p.m.–4:30 p.m.: Board Discussion, 4:30 p.m. Meeting Adjourned.

*Meeting Accessibility:* The meeting is accessible to persons with disabilities.

*Written Statements:* For access, information, or to send written statements for consideration at the committee meeting contact Ms. Jaye Panza, Designated Federal Officer, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax 831–656–2337 by April 20, 2018.

Dated: March 13, 2018.

**E.K. Baldini,**

*Lieutenant Commander, Judge Advocate General's Coms, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2018–05587 Filed 3–19–18; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

### National Coal Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meetings.

**SUMMARY:** This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, April 12, 2018, 8:30 a.m.–12:15 p.m.

**ADDRESSES:** Wink Hotel, 1143 New Hampshire Avenue NW, Washington, DC 20037

**FOR FURTHER INFORMATION CONTACT:** Joseph Giove, U.S. Department of Energy, E–136/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–0001; Telephone: 301–903–4130.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Council:* The National Coal Council provides advice and recommendations to the Secretary of Energy on general policy matters relating to coal and the coal industry.

*Purpose of Meeting:* The 2018 Spring Meeting of the National Coal Council.

**Tentative Agenda**

1. Call to order and opening remarks by Steven Winberg, NCC Designated Federal Officer & Assistant Secretary for Fossil Energy, U.S. Department of Energy
2. Election of NCC Chair and Vice-chair
3. Keynote Remarks by Steven Winberg, Assistant Secretary for Fossil Energy, U.S. Department of Energy
4. Keynote Remarks by Anthony Ku, Director of Advanced Technologies, China's National Institute of Clean and Low-Carbon Energy (NICE)
5. Presentation by Randall Atkins, CEO, RAMACO Coal on Carbon from Coal
6. Presentation by Dan Connell, Director of Market Strategy & Business Development, CONSOL Energy Inc. on Opportunities for New Technology in Coal Mining and Beneficiation
7. Presentation by John Thompson, Director Fossil Transition Project, Clean Air Task Force on Enhancing the Success Rate of Technology Deployment: An Ecosystem Approach
8. Public Comment Period
9. Other Business
10. Adjourn

Attendees are requested to register in advance for the meeting at: *http://www.nationalcoalcouncil.org/page-NCC-Events.html*

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Council, you may do so either before or after the meeting. If you would like to make oral statements regarding any item on the agenda, you should contact Joseph Giove, 301–903–4130 or *joseph.giove@hq.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include oral statements on the scheduled agenda. The Chairperson of the Council will lead the meeting in a manner that facilitates the orderly conduct of business. Oral statements are limited to 10-minutes per organization and per person.

*Minutes:* A link to the transcript of the meeting will be posted on the NCC website at: *http://www.nationalcoalcouncil.org/.*

Issued at Washington, DC, on March 14, 2018.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–05602 Filed 3–19–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6461–026]**

### City of Port Angeles, Washington; Notice of Application For Surrender of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application for surrender of license.

b. *Project No.:* 6461–026.

c. *Date Filed:* February 23, 2018.

d. *Licensee:* City of Port Angeles, Washington.

e. *Name of Project:* Morse Creek Hydroelectric Project.

f. *Location:* The project is located on Morse Creek in Clallam County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Mr. Craig Fulton, Public Works and Utility Director, City of Port Angeles, Washington, 321 East Fifth Street, Port Angeles, WA 98362–0217, Telephone: (360) 417–4800.

i. *FERC Contact:* Mr. Kurt Powers, (202) 502–8949, *Kurt.Powers@ferc.gov.*

j. Deadline for filing comments, interventions, and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–6461–026.

k. *Description of Project Facilities:* The project consists of: (a) A 10-foot-high, 25-foot-long, concrete, diversion weir and intake structure; (b) a 750-foot long, 30 by 36-inch-diameter, concrete tunnel; (c) a 11,400-foot-long, 24-inch-diameter, buried steel pipeline; (d) a 1,300-foot-long, 24-inch-diameter, buried steel penstock; (e) a 32-foot-long, 28-foot-wide, and 14-foot-high, masonry block powerhouse containing one horizontal Pelton turbine with an hydraulic capacity of 19 cubic feet per second (cfs) and a net hydraulic head of 362 feet, directly connected to single generator with a nameplate rating of 560 kilowatts; (f) a 2,400-foot-long, 12.5 kilovolt (kV), underground transmission line; and (g) appurtenant facilities.

l. *Description of Request:* The licensee proposes to surrender the project as it no longer intends to operate the project. The dam and intake facilities, including the concrete tunnel, were part of the original water structure when Morse Creek was the primary water source for the City of Port Angeles. These structures continue to be used to draw water for neighboring Clallam County Public Utility District (PUD). Since the dam structure pre-dates the hydroelectric project and would continue to serve as a water supply for the PUD and for emergency use by the City of Port Angeles, the dam structure will remain as is. The licensee will remove the generating equipment from the powerhouse and the penstock will be plugged with cement to stabilize the structure. The tailrace would be filled in to pre-project condition to prevent fish from becoming stranded during low-flow periods.

m. This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the surrender application that is the subject of this notice. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: March 14, 2018..

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05622 Filed 3–19–18; 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:* EC18–69–000.
*Applicants:* HIKO Energy, LLC.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act and Requests for Waiver of Filing Requirements and Confidential Treatment of HIKO Energy, LLC.
*Filed Date:* 3/13/18.
*Accession Number:* 20180313–5213.
*Comments Due:* 5 p.m. ET 4/3/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER18–1006–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-Central Texas Electric Co-op Interconnection Agreement to be effective 2/21/2018.
*Filed Date:* 3/13/18.
*Accession Number:* 20180313–5166.
*Comments Due:* 5 p.m. ET 4/3/18.

*Docket Numbers:* ER18–1009–000.
*Applicants:* PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Third Revised ISA, SA No. 3808, Queue No. AC1–134 to be effective 2/13/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5040.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1013–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 2632R1 MKEC, Westar Energy and KG&E Interconnection Agr to be effective 12/31/9998.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5083.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1015–000.
*Applicants:* Atlantic Renewable Projects II LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5096.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1016–000.
*Applicants:* Avangrid Arizona Renewables, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5097.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1017–000.
*Applicants:* Avangrid Renewables, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5098.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1018–000.
*Applicants:* Barton Windpower LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5100.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1019–000.
*Applicants:* Big Horn II Wind Project LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5101.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1020–000.
*Applicants:* Big Horn Wind Project LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5102.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1021–000.
*Applicants:* Blue Creek Wind Farm LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5103.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1022–000.
*Applicants:* Buffalo Ridge I LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5106.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1023–000.
*Applicants:* Buffalo Ridge II LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5107.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1024–000.
*Applicants:* Colorado Green Holdings LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.

*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5109.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1027–000.
*Applicants:* Dillon Wind LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5111.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1028–000.
*Applicants:* Elm Creek Wind, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5114.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1030–000.
*Applicants:* Elm Creek Wind II LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5116.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1032–000.
*Applicants:* Farmers City Wind, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5118.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1034–000.
*Applicants:* Flying Cloud Power Partners, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5120.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1035–000.
*Applicants:* Groton Wind, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5121.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1036–000.
*Applicants:* Hardscrabble Wind Power LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5122.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1038–000.
*Applicants:* Hay Canyon Wind LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5124.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1039–000.
*Applicants:* Juniper Canyon Wind Power LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5127.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1040–000.
*Applicants:* Klamath Energy LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5129.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1041–000.
*Applicants:* Klamath Generation LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5130.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1042–000.
*Applicants:* Klondike Wind Power LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5132.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1043–000.
*Applicants:* Klondike Wind Power II LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5133.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1044–000.
*Applicants:* Klondike Wind Power III LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5134.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1045–000.
*Applicants:* Leaning Juniper Wind Power II LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5135.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1046–000.
*Applicants:* Lempster Wind, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5136.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1047–000.
*Applicants:* Locust Ridge Wind Farm, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5137.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1048–000.
*Applicants:* Locust Ridge II, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5139.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1049–000.
*Applicants:* Manzana Wind LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5142.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1050–000.
*Applicants:* Moraine Wind LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5144.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1051–000.
*Applicants:* Mountain View Power Partners III, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5145.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1052–000.
*Applicants:* New England Wind, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5146.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1053–000.
*Applicants:* New Harvest Wind Project LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5147.
*Comments Due:* 5 p.m. ET 4/4/18.
*Docket Numbers:* ER18–1054–000.
*Applicants:* Northern Iowa Windpower II LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.

*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5150.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1055–000.
*Applicants:* Pebble Springs Wind LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5155.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1056–000.
*Applicants:* Providence Heights Wind, LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5159.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1057–000.
*Applicants:* Rugby Wind LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5161.
*Comments Due:* 5 p.m. ET 4/4/18.

*Docket Numbers:* ER18–1058–000.
*Applicants:* San Luis Solar LLC.
*Description:* Compliance filing: Compliance 2018 to be effective 5/14/2018.
*Filed Date:* 3/14/18.
*Accession Number:* 20180314–5162.
*Comments Due:* 5 p.m. ET 4/4/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05619 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AC18–56–000]**

### Notice of Request for Waiver; Southern California Edison Company

Take notice that on March 13, 2018, Southern California Edison Company, filed a request for waiver of the use of the equity method of accounting for Edison Material Supply, LLC, including FERC Form No. 1 and 3–Q, as required by 18 CFR 141.1 and 18 CFR 141.400.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comments:* 5:00 p.m. Eastern Time on March 29, 2018.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05621 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD18–6–000]**

### Notice of Availability of the Final Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 11—Arch Dams

The staff of the Federal Energy Regulatory Commission's (FERC or Commission) Office of Energy Projects has finalized its revised *Engineering Guidelines for the Evaluation of Hydropower Projects: Chapter 11—Arch Dams* (*Guidelines*), which was issued in draft form on December 7, 2017, for comment. The *Guidelines* revision reflects the most current thinking and practices of the Division of Dam Safety and Inspections.

The *Guidelines* can be found in Docket Number AD18–6–000. The full text of the *Guidelines* can be viewed on the Commission's website at *https://www.ferc.gov/industries/hydropower/safety/guidelines/eng-guide/chap11.asp.*

The *Guidelines* are intended to provide guidance to the industry. This document does not substitute for, amend, or supersede the Commission's regulations under 18 CFR part 12—Safety of Water Power Projects and Project Works. The *Guidelines* impose no new legal obligations and grants no additional rights.

In response to the draft *Guidelines,* Commission staff received comments from federal and state agencies, licensees whose portfolio includes arch dams, independent consultants and inspectors, and other interested parties. Staff reviewed and considered each comment and modified several portions of the document in response. Staff declined to modify the document where comments either were already adequately/accurately addressed as written, or regarded topics that were not relevant to the *Guidelines.*

All of the information related to the proposed updates to the *Guidelines* and submitted comments can be found on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''Docket Search'' and in the Docket Number field enter the docket number ''AD18–6,'' excluding the last three digits. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05618 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL18–131–000]**

### The Nevada Hydro Company, Inc.; Notice of Petition for Declaratory Order

Take notice that on March 9, 2018, The Nevada Hydro Company, Inc. (Nevada Hydro) filed a petition for declaratory order (petition), pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207. Nevada Hydro requests that the Commission declare that: (1) The Lake Elsinore Pumped Storage (LEAPS) facility is a wholesale transmission facility; and (2) LEAPS will be entitled to cost recovery under the California Independent Operators Corporation's Transmission Access Charge, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on April 9, 2018.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05616 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–105–000]**

### Panther Interstate Pipeline Energy, L.L.C.; Notice of Application

Take notice that on March 7, 2018, Panther Interstate Pipeline Energy, L.L.C. (Panther), filed an application in Docket No. CP18–105–000 pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations, seeking authorization to abandon all jurisdictional transportation services and its part 284 blanket certificate and to abandon its physical certificated facilities which are located off shore and onshore in Jefferson County, Texas (the Fishhook System), and to defer the ultimate disposition of these facilities for up to three years, all as more fully set forth in the application which is on file with the Commission and open for public inspection. Panther asserts that its proposal is consistent with the Commission approval issued in Docket No. CP11–526–000.

The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Douglas F. John or Elizabeth A. Zembruski, Attorneys, John & Hengerer, LLP, 1730 Rhode Island Avenue NW, Suite 600, Washington, DC 20036–3116 or at (202) 429–8800.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing

comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* April 4, 2018.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05620 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR18–16–000]**

### Petition for Expedited Action Addressing the Impact of Federal Income Tax Changes on Indexed Rate Increases for Oil Pipelines; Notice Inviting Comments

Take notice that on February 28, 2018, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2017), the Liquids Shippers Group submitted this Petition and request that the Commission take expedited action to address the impact of the federal income tax changes on indexed rate increases for oil pipelines.

Any interested persons may file comments or reply comments. Comments are due Thursday, April 12, 2018, at 5:00 p.m. (Eastern time). Reply Comments are due Friday, April 27, 2018, at 5:00 p.m. (Eastern time).

The Commission encourages electronic submission comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 12, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05429 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL18–121–000]**

### Hunlock Energy, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On March 13, 2018, the Commission issued an order in Docket No. EL18–121–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the proposed Rate Schedule for Reactive Service of Hunlock Energy, LLC may be unjust and unreasonable. *Hunlock Energy, LLC,* 162 FERC ¶ 61,212 (2018).

The refund effective date in Docket No. EL18–121–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–121–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05615 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2255–110; 2291–168; 2292–130]**

### Domtar Wisconsin Dam Corp.; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to amend project boundaries.

b. *Project Nos.:* 2255–110, 2291–168, and 2292–130.

c. *Date Filed:* January 24, 2018, and supplemented March 8, 2018.

d. *Applicant:* Domtar Wisconsin Dam Corp.

e. *Name of Projects:* Centralia Hydroelectric Project, Port Edwards

Hydroelectric Project, and Nekoosa Hydroelectric Project, respectively.

f. *Location:* Wisconsin River in Wood County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David S. Ulrich, Manager of Environmental and Safety, Domtar Wisconsin Dam Corporation, Nekoosa Mill, 301 Point Basse Avenue, Nekoosa, WI 54457–1422, (715) 886–7111

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–2255–110, P–2291–168, and P–2292–130.

k. *Description of Request:* The applicant proposes to remove land from the project boundaries deemed unnecessary for project purposes and to add land for the Port Edwards and Nekoosa projects deemed necessary for project purposes. The licensee states that the proposed changes to the project boundaries will enhance consistency with the Commission's current policies regarding project boundaries.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 14, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–05617 Filed 3–19–18; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–XXXX]**

## Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before April 19, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email

*PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control No.:* 3060–XXXX.

*Title:* Section 74.803(c) and (d), Wireless Microphones.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit; Not-for-profit institutions.

*Number of Respondents and Responses:* 215 respondents; 2,365 responses.

*Estimated Time per Response:* 22 hours.

*Frequency of Response:* One-time and on occasion reporting requirements.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), 7(a) 301, 302(a), 303(f), 307(e), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 302(a), 303(f), 307(e), and 332.

*Total Annual Burden:* 2,490 hours.

*Total Annual Cost:* $166,563.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* No information is requested that would require assurance of confidentiality.

*Needs and Uses:* The Commission will submit this information collection to OMB as a new collection after this 60-day comment period to obtain the full three-year clearance from them.

On July 14, 2017 the Federal Communications Commission released an Order on Reconsideration and Further Notice of Proposed Rulemaking, *Promoting Spectrum Access for Wireless Microphone Operations; Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37; Amendment of Part 74 of the Commission's Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones,* Order on Reconsideration and Further Notice of Proposed Rulemaking, GN Docket No. 14–166, ET Docket No. 14–165, GN Docket No. 12–268, WT Docket No. 08–167, and ET Docket No. 10–24, in which the Commission permits certain qualifying professional theaters, music, and performing arts organizations to obtain a part 74 license that would allow them as licensees to obtain such interference protection in the TV bands and, when needed, also to operate in other spectrum bands available for licensed wireless microphone operations under part 74. In addition, with respect to licensed wireless microphone operations in other frequency bands, revisions to the channelization plan for licensed wireless microphone operations in the 169–172 MHz band, generally affirm but provide clarifications regarding the 30-megahertz limit placed on licensed wireless microphone users' access to spectrum in the 1435–1525 MHz band, and clarify coordination requirements and operational limitations for licensed wireless microphone operations in the 941.5–944 MHz band. With these various revisions and clarifications, the Commission finalized the technical rules for wireless microphone operations and, the Commission promotes our goal of accommodating wireless microphone users' needs through access to spectrum resources following the incentive auction and reconfiguration of the TV bands.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–05570 Filed 3–19–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0687 and 3060–0678]**

## Information Collections Being Submitted to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before April 19, 2018.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the Commission's submission to OMB will be displayed.

*OMB Control Number:* 3060–0687.

*Title:* Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124 and CG Docket No. 13–46.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; not-for-profit entities.

*Number of Respondents and Responses:* 331 respondents; 3,028 responses.

*Estimated Time per Response:* .25 hours (15 minutes) to 24 hours.

*Frequency of Response:* Annual and on-occasion reporting requirements; Third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 710 of the Communications Act of 1934, as amended, 47 U.S.C. 610.

*Total Annual Burden:* 7,236 hours. Total Annual Cost: $991,618.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* This notice and request for comments pertains to the extension of the currently approved information collection requirements concerning hearing aid compatibility (HAC) for wireline handsets used with the legacy telephone network, updated estimates of existing burdens that were included in the February 2015 PRA submission to OMB, and new collections related to HAC for wireline handsets used with advanced communications services (ACS), such as Voice over internet Protocol (VoIP). These handsets are known as ACS telephonic customer premises equipment (ACS telephonic CPE).

Beginning in the 1980s, the Commission adopted a series of regulations to implement statutory directives requiring wireline telephone handsets in the United States (for use with the legacy telephone network) to be hearing aid compatible. In 2010, the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 111–260, sec. 102, 710(b), 124 Stat. 2751, 2753 (CVAA) (codified at 47 U.S.C. 610(b)), amended by Public Law 111–265, 124 Stat. 2795 (technical corrections to the CVAA), amended section 710(b) of the Communications Act of 1934 to apply the HAC requirements to ACS telephonic CPE, including VoIP telephones. In accordance with this provision, the Commission adopted Access to Telecommunications Equipment and Services by Persons with Disabilities et al., Report and Order and Order on Reconsideration, FCC 17–135, released October 26, 2017, which amended the HAC rules to cover ACS telephonic CPE to the extent such devices are designed to be held to the ear and provide two-way voice communication via a built-in speaker.

The information collections contain third-party disclosure and labeling requirements. The information is used to inform consumers who purchase or use wireline telephone equipment whether the telephone is hearing aid compatible; to ensure that manufacturers comply with applicable regulations and technical criteria; to ensure that information about ACS telephonic CPE is available in a database administered by the Administrative Council for Terminal Attachments (ACTA); and to facilitate the filing of complaints about the ACS telephonic CPE.

**Wireline Handsets Used With the Legacy Telephone Network**

- 47 CFR 68.224 requires that every non-hearing aid compatible wireline telephone used with the legacy wireline network that is offered for sale to the public contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible. If the handset is offered for sale without a surrounding package, then the telephone must be affixed with a written statement that the telephone is not hearing aid compatible. In addition, each handset must be accompanied by instructions in accordance with 47 CFR 62.218(b)(2).
- 47 CFR 68.300 requires that all wireline telephones used with the legacy wireline network that are manufactured in the United States (other than for export) or imported for use in the United States and that are hearing aid compatible have the letters ''HAC'' permanently affixed.

**ACS Telephonic CPE**

- New § 68.502(a) of the Commission's rules contains information collection requirements for ACS telephonic CPE that are similar to the HAC label and notice requirements in 47 CFR 68.224 and 68.300 (discussed above), *i.e.,* the ''HAC'' labeling requirement for hearing aid compatible equipment, and the package information for non-hearing aid compatible equipment, apply to ACS telephonic CPE.
- New § 68.501 of the Commission's rules requires responsible parties to obtain certifications of their equipment by using a third-party Telecommunications Certification Body (TCB) or a Supplier's Declaration of Conformity. (A responsible party is the party, such as the manufacturer, that is responsible for the compliance of ACS telephonic CPE with the hearing aid compatibility rules and other applicable technical criteria. A Supplier's Declaration of Conformity is a procedure whereby a responsible party makes measurements or takes steps to ensure that CPE complies with technical standards, which results in a document by the same name.) Section 68.501 of the Commission's rules applies to ACS telephonic CPE rule sections defining the roles of TCBs and the uses of Supplier's Declarations of Conformity

for wireline handsets used with the legacy telephone network.

• New § 68.504 of the Commission's rules requires information about ACS telephonic CPE to be included in a database administered by ACTA. (ACTA is an organization, previously created pursuant to FCC regulations, whose key function is to maintain a database of telephone equipment.) In addition, ACS telephonic CPE must be labeled as required by ACTA.

• New § 68.502(b)–(d) of the Commission's rules requires responsible parties to: Warrant that ACS telephonic CPE complies with applicable regulations and technical criteria; give the user instructions required by ACTA for ACS telephonic CPE that is hearing aid compatible; give the user a notice for ACS telephonic CPE that is not hearing aid compatible; and notify the purchaser or user of ACS telephonic CPE whose approval is revoked, that the purchaser or user must discontinue its use.

• New § 68.503 of the Commission's rules requires manufacturers of ACS telephonic CPE to designate an agent for service of process for complaints that may be filed at the FCC.

*OMB Control No.:* 3060–0678.

*Title:* Part 25 of the Federal Communications Commission's Rules: Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

*Form Nos.:* FCC Form 312; Schedule A; Schedule B; Schedule S; FCC Form 312–EZ; FCC Form 312–R.

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 5,036 respondents; 5,094 responses.

*Estimated Time per Response:* 0.5–80 hours per response.

*Frequency of Response:* On occasion, one time, and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

*Total Annual Burden:* 35,622 hours.

*Annual Cost Burden:* $12,411,120.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information. Certain information collected regarding international coordination of satellite systems is not routinely available for public inspection pursuant to 5 U.S.C. 552(b) and 47 CFR 0.457(d)(vii).

*Needs and Uses:* On September 27, 2017, the Commission released a Report and Order, FCC 17–122, titled, ''Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters.'' In this Report and Order, the Commission updated and streamlined its rules governing satellite constellations that operate in the fixed-satellite service. Many of the amendments are substantive changes intended to give licensees greater operational flexibility. At the same time, however, many more applications for non-geostationary, fixed-satellite service systems have been filed, increasing the overall information collection burden.

The information collection requirements in this collection are needed to determine the technical, legal, and other qualifications of applicants and licensees to operate a radio station and to determine whether grant of an authorization serves the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide communications services in the United States. Therefore, the Commission would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization Basic Telecom Agreement.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–05571 Filed 3–19–18; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1033]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before May 21, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1033.

*Title:* Multi-Channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

*Form Number:* FCC Form 396–C.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 2,200 respondents and 2,620 responses.

*Frequency of Response:* Recordkeeping requirement; Once every five year reporting requirement; Annual reporting requirement.

*Estimated Time per Response:* 10 minutes—2.5 hours.

*Total Annual Burden:* 3,187 hours.

*Total Annual Cost to Respondents:* None.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory

authority is contained in Sections 154(i), 303 and 634 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no assurance of confidentiality provided to respondents.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* The FCC Form 396–C is a collection device used to assess compliance with the Equal Employment Opportunity (EEO) program requirements by Multi-channel Video Programming Distributors (''MPVDs''). It is publicly filed to allow interested parties to monitor a ''MPVD's'' compliance with the Commission's EEO requirements. All ''MVPDs'' must file annually an EEO report in their public file detailing various facts concerning their outreach efforts during the preceding year and the results of those efforts. ''MVPDs'' will be required to file their EEO public file report for the preceding year as part of the in-depth ''MVPD'' investigation conducted once every five years.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2018–05572 Filed 3–19–18; 8:45 am]

BILLING CODE 6712–01–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 website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 012464–001.

*Title:* NYK/CMA CGM Space Charter Agreement.

*Parties:* Nippon Yusen Kaisha, CMA CGM S.A., and Ocean Network Express.

*Filing Party:* Joshua Stein; Cozen O'Connor; 1200 19th Street NW; Washington, DC 20036.

*Synopsis:* The Amendment revises the Agreement to provide for the transition that will occur following the combination of the container liner operations of Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha into a new company known as Ocean Network Express Pte. Ltd. effective April 1, 2018. Accordingly, Ocean Network Express Pte. Ltd. is added as a party. The Parties request Expedited Review.

By Order of the Federal Maritime Commission.

Dated: March 14, 2018.

**Rachel E. Dickon,**

*Secretary.*

[FR Doc. 2018–05558 Filed 3–19–18; 8:45 am]

BILLING CODE 6731–AA–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 2018.

*A. Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Monticello BankShares, Inc., Monticello, Kentucky;* to merge with Bluegrass Bancorp, Inc., Danville, Kentucky, and thereby indirectly acquire Bluegrass Community Bank, Inc., Danville, Kentucky.

Board of Governors of the Federal Reserve System, March 15, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–05598 Filed 3–19–18; 8:45 am]

BILLING CODE P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 2018.

*A. Federal Reserve Bank of Atlanta* (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Kenneth Nelkin, individually and as trustee for Max Nelkin Revocable Trust and Elliette Nelkin Revocable Trust, all of Morgan City, Louisiana; and Elliette Nelkin, New Orleans, Louisiana;* to retain shares of MC Bancshares, Inc. and thereby retain shares of M C Bank & Trust Company, both of Morgan City, Louisiana.

2. *Paula Swiber, Mike Swiber, Carline Land Corporation, Carline Bouef Properties, Wallace Carline, individually and as trustee for Wallace Carline and Gracie Carline, all of Morgan City, Louisiana;* to retain shares of MC Bancshares, Inc., and thereby retain shares of M C Bank & Trust Company, both of Morgan City, Louisiana.

Board of Governors of the Federal Reserve System, March 15, 2018.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018–05597 Filed 3–19–18; 8:45 am]

BILLING CODE P

## FEDERAL TRADE COMMISSION

**[File No. 182 3038]**

## Nectar Brand LLC; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 12, 2018.

**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: ''In the Matter of Nectar Brand LLC, a limited liability company, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/nectarbrandconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of Nectar Brand LLC, a limited liability company, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Julia Solomon Ensor (202–326–2377) and Crystal Ostrum (202–326–3405), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 13, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 12, 2018. Write ''In the Matter of Nectar Brand LLC, a limited liability company, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC'' 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 website, 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/nectarbrandconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''In the Matter of Nectar Brand LLC, a limited liability company, also doing business as Nectar Sleep; DreamCloud, LLC; and DreamCloud Brand LLC'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.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, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 12, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement

containing a consent order from Nectar Brand LLC, also d/b/a Nectar Sleep; Dreamcloud, LLC; and Dreamcloud Brand LLC (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing, sale, and distribution of mattresses with claims that the products are assembled in the United States.

According to the FTC's complaint, respondent represented that its products are ''assembled in the USA.'' In fact, the respondent's mattresses are wholly imported. Therefore, this representation was false or misleading. Based on the foregoing, the complaint alleges that respondent engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future. Consistent with the FTC's Enforcement Policy Statement on U.S. Origin Claims, Part I prohibits respondent from making U.S.-origin claims for their products unless either: (1) The final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial.

Part II prohibits respondent from making any country-of-origin claim about a product or service unless the claim is true, not misleading, and respondent has a reasonable basis substantiating the representation.

Parts III through V are reporting and compliance provisions. Part III requires the filing of compliance reports within one year after the order becomes final and within 14 days of any change that would affect compliance with the order. Part IV requires respondent to maintain certain records, including records necessary to demonstrate compliance with the order. Part V requires respondent to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview respondent's personnel.

Finally, Part VI is a ''sunset'' provision, terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2018–05613 Filed 3–19–18; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH18–004, Advancing Public Health in Central America (Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Panama).

*Date:* April 17, 2018.

*Time:* 9:00 a.m.–2:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC, 1600 Clifton Drive, Atlanta, GA 30331, (404) 639–4796; *HShoob@cdc.gov.*

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. 2018–05577 Filed 3–19–18; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH14–002, Addressing Emerging Infectious Diseases in Bangladesh; GH16–003, Conducting Public Health Research in Thailand: Technical collaboration with the Ministry of Public Health in the Kingdom of Thailand (MOPH); GH16–006, Conducting Public Health Research in Kenya; GH17–005, Conducting Public Health Research in China.

*Date:* April 10, 2018.

*Time:* 9:00 a.m.–2:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC,

1600 Clifton Drive, Atlanta, GA 30331, (404) 639–4796; *HShoob@cdc.gov*.

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. 2018–05576 Filed 3–19–18; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH18–002, Strengthening detection of emerging infectious diseases in India; GH18–005, Enhancing Capacity for Strategic and Applied Research Activities in Support of Control and Elimination of Malaria and Neglected Tropical Diseases.

*Date:* April 18, 2018.

*Time:* 9:00 a.m.–2:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC, 1600 Clifton Drive, Atlanta, GA 30331, (404) 639–4796; *HShoob@cdc.gov.*

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. 2018–05578 Filed 3–19–18; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–18–18JC; Docket No. CDC–2017–0121]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Women's Health Needs Study: The Health of U.S.-Resident Women from Countries with Prevalent Female Genital Mutilation/Cutting (FGM/C).

**DATES:** CDC must receive written comments on or before May 21, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2017–0121 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

*Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Women's Health Needs Study: The Health of U.S.-Resident Women from Countries with Prevalent Female Genital Mutilation/Cutting (FGM/C)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Female Genital Mutilation/Cutting (FGM/C) is a practice common in many countries in parts of Asia, Africa and the Middle East that can have severe, deleterious health consequences for women and girls. Recent studies suggest that more than 500,000 women and girls in the United States may have been cut or be at risk for FGM/C based on whether women or their mothers are from countries with high prevalence of FGM/C. However, this estimate was derived using indirect techniques that do not account for the differing characteristics of women in the country of origin versus those who have migrated to the United States, or any other factors that are likely to affect the prevalence of FGM/C. Additional major knowledge gaps regarding FGM/C in the United States include: The prevalence of FGM/C in selected communities in the United States with high concentrations of residents from countries where FGM/C is prevalent; women's attitudes about continuance of the practice; and the health characteristics and needs of women living in the United States who have experienced FGM/C or are at risk for FGM/C.

This study aims to capture information on women's history of FGM/C, their experiences with health care services, and their attitudes about continuation of the FGM/C practice. Findings from this study will be used to identify public health needs of women and communities in the United States that are affected by FGM/C, to formulate public health strategies to meet identified needs, and to inform prevention efforts.

The proposed information collection will include piloting and conducting a full-scale survey of the health experiences and needs of women who live in selected communities in the United States with high concentrations of residents from countries where FGM/C is widely practiced. The pilot study will be conducted during the first year of this project and will be used to assess the feasibility of sampling and recruiting methods for a hard-to-reach population on a sensitive topic. Based on findings from the pilot, a change request, including necessary translations, will be submitted to conduct the full study during the second and third year of this project. The full study is planned to be implemented in up to five community sites in the United States. The estimated annualized burden over the three years of this project is 311 hours.

There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Women age 18 to 49 who were born in, or whose mother was born in, an FGM/C practicing country. | WHNS Eligibility Screener. | 667 | 1 | 1/60 | 11 |
| Women age 18–49 who were born in, or whose mother was born in, an FGM/C practicing country. | WHNS Questionnaire ... | 400 | 1 | 45/60 | 300 |
| Total ..... | ..... | ..... | ..... | ..... | 311 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2018–05594 Filed 3–19–18; 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

*Title:* Evaluation of Domestic Victims of Human Trafficking Program

*OMB No.:* 0970–0487.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection as part of the study, ''Evaluation of the Domestic Victims of Human Trafficking (DVHT) Program.'' This Notice addresses the cross-site process evaluation to be conducted with the 13 FY 2016 DVHT projects that were awarded 3-year cooperative agreements by the Office of Trafficking in Persons (OTIP). The intent of the DVHT Program is to build, expand, and sustain organizational and community capacity to deliver trauma-informed, strength-based, and victim-centered services for domestic victims of severe forms of human trafficking through coordinated case management, a system of referrals and the formation of community partnerships.

The objective of the evaluation is to describe the ways in which projects achieve the goals of the DVHT Program and examine types of models that serve victims of human trafficking. Evaluation questions are focused on understanding project and service delivery models, process, and implementation, including partnership and collaboration development; services offered to and received by victims; strategies to identify and engage survivors; ways projects define and monitor program successes and outcomes; and program challenges, achievements, and lessons learned. Information from the evaluation will assist federal, state, and community policymakers and funders in making decisions about future program models to serve domestic victims of human trafficking, as well as to refine evaluation strategies for future programs targeting trafficking victims.

The evaluation of the DVHT Program will document and describe projects' implementation approaches, including their service models and community partnerships; services provided to clients (*i.e.,* victims of severe forms of human trafficking); service delivery practices; strategies to meet survivors' immediate and long-term housing needs; and approaches to engaging survivors in program development and service delivery.

Primary data for the evaluation will be collected via surveys with project directors, case managers, and projects' key community partners; and semi-structured qualitative interviews, including telephone interviews with project directors, in-person interviews with select project staff, survivor

leaders, and program partners, and individual interviews with program clients. Interviews from multiple perspectives will enhance the government's understanding of appropriate service models and practice strategies for identifying, engaging, and meeting the needs of diverse populations of victims of severe forms of human trafficking. Data collection will take place after receiving OMB approval through March 2020.

Data collection for an exploratory evaluation of the FY15 DVHT projects (''Domestic Human Trafficking Demonstration Projects'') is being conducted under a prior Information Collection Request under 0970–0487. The data have provided insight into approaches projects used to enhance organizational and community capacity, identify domestic victims, and deliver case management and direct services in collaboration with their community partners. The currently proposed data collection for FY16 DVHT will build on this earlier data collection for the FY15 DVHT study. All data collection approved for FY15 DVHT is complete.

*Respondents:* Project directors, case managers, survivor leaders, other select project staff, key community partners, and clients.

TOTAL ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| Project Director Survey | 13 | 7 | 1 | .5 | 4 |
| Partner Survey | 260 | 130 | 1 | .25 | 33 |
| Case Manager Survey | 130 | 65 | 1 | .33 | 21 |
| Project Director Interview #1 | 13 | 7 | 1 | 2 | 14 |
| Project Director Interview #2 | 13 | 7 | 1 | 1.5 | 11 |
| Site Visit Interview | 136 | 68 | 1 | 1.5 | 102 |
| Client Interview | 40 | 20 | 1 | 1 | 20 |

*Estimated Total Annual Burden Hours:* 205.

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 Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@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.

**Mary Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2018–05581 Filed 3–19–18; 8:45 am]

**BILLING CODE 4184–47–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

*Date:* April 12, 2018.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vascular and Hematology AREA Application Review.

*Date:* April 18, 2018.

*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:* Natalia Komissarova, Ph.D., Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.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: March 14, 2018.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–05573 Filed 3–19–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Thyroid Cancer and Other Diseases in Belarus.
*Date:* April 12, 2018.
*Time:* 11:00 a.m. to 1:00 p.m.
*Agenda:* To review and evaluate contract proposals.
*Place:* National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, MD 20850 (Telephone Conference Call).
*Contact Person:* Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Feasibility and Planning Studies for SPOREs to Investigate Cancer Health Disparities (P20) I.
*Date:* April 25, 2018.
*Time:* 8:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton, Washington/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20892–9750, 240–276–6457, *mh101v@nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Feasibility and Planning Studies for SPOREs to Investigate Cancer Health Disparities (P20) II.
*Date:* April 26, 2018.
*Time:* 8:00 a.m. to 6:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton Washington/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Klaus B Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W116, Bethesda, MD 20892–9750, 240–276–5413, *klaus.piontek@nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review II (P01).
*Date:* May 1, 2018.
*Time:* 8:00 a.m. to 4:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
*Contact Person:* Caron A. Lyman, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review III (P01).
*Date:* May 3–4, 2018.
*Time:* 8:00 a.m. to 12:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.
*Contact Person:* Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892–9750, 240–276–5007, *tandlea@mail.nih.gov*.

*Name of Committee:* National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.
*Date:* May 3, 2018.
*Time:* 8:00 a.m. to 2:15 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Bethesda, MD 20892–9750, 240–276–6442, *ss537t@nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Cancer Center Support Grant (P30).
*Date:* May 3, 2018.
*Time:* 2:30 p.m. to 4:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Caterina Bianco, MD, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6459, *biancoc@mail.nih.gov*.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project Review IV (P01).
*Date:* May 10–11, 2018.
*Time:* 8:00 a.m. to 12:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road Bethesda, MD 20852.
*Contact Person:* Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Bethesda, MD 20892–9750, 240–276–6611, *mukesh.kumar3@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 14, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–05574 Filed 3–19–18; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0186]**

### Great Lakes Pilotage Advisory Committee

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Notice of Federal Advisory Committee teleconference meeting.

**SUMMARY:** The Great Lakes Pilotage Advisory Committee will meet via teleconference, to receive a brief out from the Subcommittee tasked to respond to the issuance of Executive Orders 13771, ''Reducing Regulation and Controlling Regulatory Costs''; 13777, ''Enforcing the Regulatory Reform Agenda;'' and 13783, ''Promoting Energy Independence and Economic Growth.'' This teleconference will be open to the public.

**DATES:**

*Meeting.* The full Committee will meet on Wednesday, April 11, 2018, from 1 p.m. to 4:00 p.m. Eastern Daylight Time. This teleconference may close early if all business is finished.

*Comments and supporting documents:* To ensure your comments are reviewed by Committee members before the teleconference, submit your written comments no later than Wednesday, April 4, 2018.

**ADDRESSES:** To join the teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than Wednesday, April 4, 2018.

*Instructions:* You are free to submit comments at any time, including orally at the teleconference, but if you want Committee members to review your comment before the meeting, please submit your comments no later than April 4, 2018. We are particularly interested in comments on the issues in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and the docket number USCG–2018–0186. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. For more information about privacy and docket, review Privacy and Security Notice for the Federal Docket Management System at *http://www.regulations.gov/privacyNotice.* Written comments may also be submitted using the Federal e-Rulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Docket Search:* For access to the docket or to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use ''USCG–2018–0186'' in the ''Search'' box, press Enter, and then click on the item you wish to view.

**FOR FURTHER INFORMATION CONTACT:** Mr. Todd Haviland, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7509, Washington, DC 20593–7581; telephone 202–372–2037 or email *Todd.A.Haviland@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is in compliance with the Federal Advisory Committee Act (Title 5, U.S.C. Appendix). The Great Lakes Pilotage Advisory Committee is established under the authority of 46 U.S.C. 9307, and makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

### Agenda of Meeting

(1) Introduction.

(2) Roll call of Committee members and determination of a quorum.

(3) Regulations Reform Subcommittee Report.

(4) Discussion of Regulatory Reform Task #01–17—Input to Support Regulatory Reform of U.S. Coast Guard Regulations—Executive Orders 13771 and 13783.

(5) Public Comment period.

(6) Formulate recommendation regarding Task #01–17.

A copy of all meeting documentation will be available at *http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Waterways-and-Ocean-Policy/Office-of-Waterways-and-Ocean-Policy-Great-Lakes-Pilotage-Div/* by April 4, 2018. Alternatively, you may contact Mr. Todd Haviland as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period during the meeting. Speakers are requested to limit their comments to 3 minutes and keep their remarks to the topic of the Regulation Reform. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: March, 9 2018.

**Michael D. Emerson,**

*Director, Marine Transportation Systems.*

[FR Doc. 2018–05609 Filed 3–19–18; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2010–0316]**

### National Boating Safety Advisory Council; Vacancies

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard seeks applications for membership on the National Boating Safety Advisory Council. This Council advises the Coast Guard on recreational boating safety regulations and other major boating safety matters.

**DATES:** Completed applications should reach the U.S. Coast Guard on or before May 21, 2018.

**ADDRESSES:** Applicants should send a cover letter expressing interest in an appointment to the National Boating Safety Advisory Council and a resume detailing the applicant's boating experience. We will not accept a biography. Incomplete applications will not be considered. The cover letter and/or resume should include the following:

- Membership category the applicant is seeking an appointment for;
- Home address, phone number and email address;
- Employer name and address (if applicable); and
- Work phone number and email address (if applicable).

Applications should be submitted via one of the following methods:

- *By email: NBSAC@uscg.mil* (preferred).
- *By mail:* Commandant (CG–BSX–2), *Attn:* NBSAC ADFO, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Ave. SE, Washington, DC 20593–7501.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Ludwig, Alternate Designated Federal Officer of the National Boating Safety Advisory Council; telephone 202–372–1061 or email at *NBSAC@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The National Boating Safety Advisory Council is a Federal advisory committee which operates under the provisions of Federal Advisory Committee Act, (Title 5 U.S.C., Appendix). It was established under the authority of 46 United States Code 13110 and advises the U.S. Coast Guard on boating safety regulations and other major boating safety matters. The Council usually meets at least twice each year at a location selected by the U.S. Coast Guard. It may also meet for extraordinary purposes. Subcommittees or working groups may also meet to consider specific issues.

Each member serves for a term of three years. Members may be considered to serve a maximum of two consecutive full terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is when attending National Boating Safety Advisory Council meetings; members may be reimbursed for travel expenses and provided per diem in accordance with Federal Travel Regulations.

We will consider applications for the following seven positions that will be vacant on January 1, 2019:

- Two representatives of State officials responsible for State boating safety programs;
- Two representatives of recreational boat and associated equipment manufacturers; and
- Three representatives of national recreational boating organizations or the general public.

If you are selected as a member from the general public, you will be appointed and serve as a Special Government Employee as defined in section 202(a) of Title 18, United States

Code. Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450). The U.S. Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*) or by contacting the individual listed above in **FOR FURTHER INFORMATION CONTACT**. Applications for a member drawn from the general public must be accompanied by a completed OGE Form 450.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions'' (79 FR 47482, August 13, 2014). The position we list for a member from the general public would be someone appointed in their capacity and would be designated as a Special Government Employee as defined in section 202(a) of Title 18, U.S.C. Registered lobbyists are lobbyist as defined in 2 U.S.C. 1602 who are required by 2 U.S.C 1603 to register with the Secretary of the Senate and the Clerk of the House Representative.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. In addition to recreational boating safety experience, the U.S. Coast Guard is particularly interested in applicants who also have experience developing and implementing national media outreach campaigns designed to influence the decision-making of targeted audiences. The vacancies announced in this notice apply to membership positions that become vacant on January 1, 2019. Appointments for the 2017 and 2018 vacancies remain pending. Individuals who have applied for National Boating Safety Advisory Council membership in any prior years are asked to re-submit a complete application if the individual wishes to apply for any of the vacancies announced in this notice.

To be eligible, applicants should have experience in one of the categories listed in the **SUPPLEMENTARY INFORMATION** section.

The Department of Homeland Security does not discriminate in selection of Council members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Council, send your cover letter and resume to Mr. Jeff Ludwig, Alternate Designated Federal Officer of the National Boating Safety Advisory Council via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. All email submittals will receive email receipt confirmation.

Dated: March 9, 2018.

**Jennifer F. Williams,**

*Captain, U.S. Coast Guard, Director of Inspections and Compliance.*

[FR Doc. 2018–05566 Filed 3–19–18; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0107]**

### Certificate of Alternative Compliance for the NOAA Research Vessel FERDINAND R. HASSLE

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of issuance of a certificate of alternative compliance.

**SUMMARY:** The Coast Guard announces that the U.S. Coast Guard First District Prevention Department has issued a certificate of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the NOAA Research Vessel FERDINAND R. HASSLER, ON 9478559. We are issuing this notice because its publication is required by statute. Due to the construction and placement of the vessel's side lights, NOAA Research Vessel FERDINAND R. HASSLER cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of issuance of a certificate of alternative compliance promotes the Coast Guard's marine safety mission.

**DATES:** The Certificate of Alternative Compliance was issued on March 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** For information or questions about this notice call or email Mr. Kevin Miller, First District Towing Vessel/Barge Safety Specialist, U.S. Coast Guard; telephone (617) 223–8272, email *Kevin.L.Miller2@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law [1] and Coast Guard regulation,[2] the vessel's owner, builder, operator, or agent of those vessels may apply for a certificate of alternative compliance (COAC).[3] For vessels of special construction, the cognizant Coast Guard District Office determines whether the vessel for which the COAC is sought complies as closely as possible with the 72 COLREGS, and decides whether to issue the COAC which must specify the required alternative installation. If the Coast Guard issues a COAC, under the governing statute [4] and regulations,[5] the Coast Guard must publish notice of this action. Once issued, a COAC remains valid until information supplied in the COAC application or the COAC terms become inapplicable to the vessel.

The First District Prevention Department, U.S. Coast Guard, certifies that the NOAA Research Vessel FERDINAND R. HASSLER, ON 9478559 is a vessel of special construction or purpose, and that, with respect to the position of the vessels side light, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The First District Prevention Department further finds and certifies that the vessel's sidelights, located in a position 15′3″ forward of frame 14 and 5′3″ below the top of the bridge/02 Deck mounted to the bridge wing, are in the closet possible compliance with the applicable provisions of the 72 COLREGS.[6]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

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[1] 33 U.S.C. 1605(c).

[2] 33 CFR 81.3.

[3] 33 CFR 81.5.

[4] 33 U.S.C. 1605(c).

[5] 33 CFR 81.18.

[6] 33 U.S.C. 1605(a); 33 CFR 81.9.

Dated: March 12, 2018.

**Byron L. Black,**

*Captain, U.S. Coast Guard, Chief, Prevention Division, First Coast Guard District.*

[FR Doc. 2018–05608 Filed 3–19–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6083–N–01]**

## Manufactured Housing Consensus Committee (MHCC): Notice Inviting Nominations of Individuals To Serve on the Committee

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of request for nominations to serve on MHCC.

**SUMMARY:** The Department of Housing and Urban Development invites the public to nominate individuals for appointment, with the approval of the Secretary, to the Manufactured Housing Consensus Committee (MHCC), a federal advisory committee established by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000. The Department will only make appointments from nominations submitted in response to this Notice. Individuals that may have applied in response to prior requests for nominations and who are still interested in being appointed must re-apply pursuant to this notice.

**DATES:** The Department will accept nominations until April 19, 2018.

**ADDRESSES:** Nominations must submitted through the following website: *http://mhcc.homeinnovation.com/Application.aspx.* The submitted nominations are addressed to: Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, c/o Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774.

**FOR FURTHER INFORMATION CONTACT:** Teresa B. Payne, Acting Deputy Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9164, Washington, DC 20410–8000; telephone number 202–708–6423 (this is not a toll-free number). For hearing and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 604 of the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569) amended the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (Act) to require the establishment of the MHCC, a federal advisory committee, to: (1) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the manufactured housing construction and safety standards; and (2) to provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement manufactured housing regulations, including regulations specifying the permissible scope and conduct of monitoring. The Act authorizes the Secretary to appoint a total of twenty-two members to the MHCC. Twenty-one members have voting rights; the twenty-second member represents the Secretary and is a non-voting position. Service on the MHCC is voluntary. Travel and per diem for meetings is provided in accordance with federal travel policy pursuant to 5 U.S.C. 5703.

HUD seeks highly qualified and motivated individuals who meet the requirements set forth in the Act to serve as voting members of the MHCC for up to two terms of three years. The MHCC expects to meet at least one to two times annually. Meetings may take place by conference call or in person. Members of the MHCC undertake additional work commitments on subcommittees and task forces regarding issues under deliberation.

### Nominee Selection and Appointment

Members of the Consensus Committee are appointed to serve in one of three member categories. Nominees will be appointed to fill voting member vacancies in the following categories:

1. *Producers*—Seven producers or retailers of manufactured housing.

2. *Users*—Seven persons representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes.

3. *General Interest and Public Officials*—Seven general interest and public official members.

The Act provides that the Secretary shall ensure that all interests directly and materially affected by the work of the MHCC have the opportunity for fair and equitable participation without dominance by any single interest; and may reject the appointment of any one or more individuals in order to ensure that there is not dominance by any single interest. For purposes of this determination, dominance is defined as a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation.

Additional requirements governing appointment and member service include:

(1) Nominees appointed to the User category, and three of the individuals appointed to the General Interest and Public Official category shall not have a significant financial interest in any segment of the manufactured housing industry; or a significant relationship to any person engaged in the manufactured housing industry.

(2) Each member serving in the User category shall be subject to a ban disallowing compensation from the manufactured housing industry during the period of, and during the one year following, his or her membership on the MHCC.

(3) Nominees selected for appointment to the MHCC shall be required to provide disclosures and certifications regarding conflict-of-interest and eligibility for membership prior to finalizing an appointment.

All selected nominees will be required to submit certifications of eligibility under the foregoing criteria as a prerequisite to final appointment.

### Consensus Committee—Advisory Role

The MHCC's role is solely advisory to the Secretary on the subject matter described above.

### Federal Advisory Committee Act

The MHCC is subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), 41 CFR parts 101–6 and 102–3 (the FACA Final Rule), and to the Presidential Memorandum, dated June 18, 2010, directing all heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions. The June 18, 2010, Presidential Memorandum authorized the Director of the Office of Management and Budget (OMB) to issue guidance to implement this policy. On August 13, 2014 (79 FR 47482), OMB issued guidance regarding the prohibition against appointing or re-appointing federally registered lobbyists to clarify that the ban applies to persons serving on advisory committees, boards, and commissions in their individual capacity and does not apply if they are specifically appointed to represent the

interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or state or local governments.

**Term of Office**

Consensus Committee members serve at the discretion of the Secretary or for a three-year term and for up to two terms.

**Nominee Information**

Individuals seeking nomination to the MHCC should submit detailed information documenting their qualifications as addressed in the Act and this Notice. Individuals may nominate themselves. HUD recommends that the application form be accompanied by a resume.

**Additional Information**

The Department will only make appointments from nominations submitted in response to this Notice. Individuals that may have applied replied in response to prior requests for nominations and who are still interested in being appointed must re-apply pursuant to this notice. To be considered for appointment to a position of an MHCC member whose term expired in December of 2017, the nomination should be submitted by April 19, 2018.

Appointments will be made at the discretion of the Secretary.

Dated: March 14, 2018.

**Dana T. Wade,**

*General Deputy Assistant, Secretary for Housing.*

[FR Doc. 2018–05596 Filed 3–19–18; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2017–N169; FXES111402C0000–189–FF02ENEH00]**

### Endangered and Threatened Wildlife and Plants; Arizona Electric Power Cooperative; Survival Enhancement Permit Application; Sonoran Desert Tortoise Candidate Conservation Agreement With Assurances, Arizona

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS), announce receiving Arizona Electric Power Cooperative's (AEPCO; applicant) survival enhancement permit application, under the Endangered Species Act of 1973, as amended (Act). The requested permit would authorize Sonoran desert tortoise incidental take resulting from conservation activities and ongoing lawful activities, should the species be listed as endangered or threatened in the future. The permit application includes a proposed candidate conservation agreement with assurances (CCAA) between AEPCO and the FWS for a 25-year period. In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed permit action qualifies under a categorical exclusion. We are accepting comments on the permit application, proposed CCAA, and draft NEPA screening form supporting using a categorical exclusion.

**DATES:** *Submission of Comments:* We will accept comments received or postmarked on or before April 19, 2018.

**ADDRESSES:** *Obtaining Documents:* You may obtain copies of the application, the proposed CCAA, the draft NEPA compliance documentation, or other related documents by going to the FWS website at *http://www.fws.gov/southwest/es/arizona/Sonoran_tort.htm.* Alternatively, you may obtain CD–ROMs with electronic copies of these documents by writing to Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051–2517; calling (602) 242–0210; or faxing (602) 242–2513. A limited number of printed copies of the documents are also available, by request, from the Field Supervisor. Copies of the documents are also available for public inspection and review at the following locations, by appointment only:

- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6093, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051.

*Submitting Comments*

To submit written comments, please use one of the following methods, and note that your comment is in reference to the proposed Sonoran Desert Tortoise AEPCO CCAA, Arizona:

- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051–2517 (Attn: Brenda Smith).
- *Fax:* (602) 242–2513.
- *Email: FW2_HCP_Permits@fws.gov* (subject line: AEPCO CCAA).

We request that you submit comments by only the methods described above. Generally, we will post any personal information you provide us (see the Public Availability of Comments section for more information).

**FOR FURTHER INFORMATION CONTACT:** Steven L. Spangle, Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051; (602) 242–0210 (telephone).

**SUPPLEMENTARY INFORMATION:** Arizona Electric Power Cooperative (AEPCO) (AEPCO; applicant) applied to the U.S. Fish and Wildlife Service (FWS) for a survival enhancement permit (permit; TE 00948C–0) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act), section 10(a)(1)(A). The requested permit, which would be in effect for up to 25 years, if granted, would authorize Sonoran desert tortoise (*Gopherus morafkai*) incidental take.

The candidate conservation agreement with assurances (CCAA) and associated permit would include portions of the following Arizona counties where the AEPCO transmission system occurs: Cochise, La Paz, Mohave, Pima, Pinal, and Yavapai. The CCAA and associated permit would cover AEPCO's Sonoran desert tortoise conservation activities in association with their ongoing operation, repair, and maintenance activities on transmission structures, transmission lines, substations, and unpaved access roads, both within and outside AEPCO rights-of-way and easements (covered activities; AEPCO CCAA Figures 1–2). These activities include transmission line access road use, maintenance, repair, and reconstruction; manual, mechanical, and herbicide treatment to control vegetation hazards; and maintaining transmission line structures, conductors, and associated equipment. The survival enhancement permit would provide AEPCO assurances that the conservation to which they have committed is all we will require of them if the species is listed, and will provide incidental take coverage for their conservation activities and ongoing operations and maintenance activities, as described above.

The FWS also announces the availability of a draft determination that the proposed permit action qualifies as a categorical exclusion pursuant to NEPA. Therefore, we propose that this project's survival enhancement permit is ''low effect'' and qualifies for categorical exclusion under the NEPA, as 43 CFR 46.205 and 43 CFR 46.210 provide. We are making the permit application package, including the draft NEPA screening form, and draft AEPCO

CCAA, available for public review and comment.

**Background**

Survival enhancement of permits issued for CCAAs encourage non-Federal landowners, including non-Federal operators holding easements on private lands, to implement conservation measures for species that are, or are likely to become, candidates for Federal listing as endangered or threatened under the Act, by assuring landowners/operators they will not be subjected to increased property use restrictions if the covered species becomes listed in the future. Application requirements and survival enhancement of permit issuance criteria for CCAAs are in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). The joint policy on CCAAs was published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service on December 27, 2016 (80 FR 95164; December 27, 2016).

**Proposed Action**

The proposed action is the FWS issuing AEPCO a permit for covered activities in the permit area for up to 25 years, pursuant to the Act, section 10(a)(1)(A). The Permit would cover Sonoran desert tortoise ''take'' associated with covered activities occurring within the permit area.

The proposed AEPCO CCAA commits AEPCO to implement conservation measures to reduce threats and contribute to furthering Sonoran desert tortoise conservation on lands AEPCO uses while implementing covered activities within the tortoise's Arizona range.

To meet section 10(a)(1)(A) permit requirements, the applicant developed and proposes to implement the AEPCO CCAA, which describes the conservation measures AEPCO has agreed to undertake to reduce tortoise threats, ensure that incidental take will not appreciably reduce the likelihood the species can survive and recover in the wild, and benefit Sonoran desert tortoises and their habitats.

Expected benefits include, but may not be limited to: Developing and delivering personnel and contractors a training and awareness program, along with annual refreshers to avoid and minimize Sonoran desert tortoise take; limiting the amount of new disturbance within tortoise habitat; providing early notification of new buffelgrass infestations to afford opportunity for buffelgrass management to improve Sonoran desert tortoise habitat, and; limiting taking habitat, eggs, and female Sonoran desert tortoises. Additionally, through the CCAA's reporting requirements, the FWS will receive additional tortoise distribution data to add to the overall Sonoran desert tortoise knowledge base, and use it to further species conservation. Since the Sonoran desert tortoise is not federally listed, there is no regulatory requirement for AEPCO to implement a conservation program. Therefore, absent the CCAA, it is unlikely these benefits to the tortoise would be realized.

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the Act, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the proposed CCAA and, should the species become listed as threatened or endangered under the Act in the future, the AEPCO permit under the Act, section 10(a)(1)(A), will become effective and provide Sonoran desert tortoise incidental take coverage through the remainder of the CCAA's 25-year duration. We will not make our final decision until after the comment period ends, and we will fully consider all comments we receive during the public comment period.

**Public Availability of Comments**

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

We provide this notice under the Act, section 10(c) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Joy E. Nicholopoulos,**

*Acting Regional Director, Southwest Region, Albuquerque, New Mexico.*

[FR Doc. 2018–05590 Filed 3–19–18; 8:45 am]

BILLING CODE 4333–15–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2017–N186; FXES11140200000–189–FF02ENEH00]**

## Incidental Take Permit Application Received To Participate in the American Burying-Beetle Amended Oil and Gas Industry Conservation Plan in Oklahoma

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** Under the Endangered Species Act (ESA), as amended, we, the U.S. Fish and Wildlife Service, invite the public to comment on a federally listed American burying-beetle incidental take permit (ITP) application. The applicant anticipates American burying-beetle take as a result of impacts to habitat the species uses for breeding, feeding, and sheltering in Oklahoma. The take would be incidental to the applicant's activities associated with oil and gas well field and pipeline infrastructure (gathering, transmission, and distribution), including geophysical exploration (seismic), construction, maintenance, operation, repair, decommissioning, and reclamation. If approved, the permit would be issued under the approved *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.*

**DATES:** To ensure consideration, written comments must be received on or before April 19, 2018.

**ADDRESSES:** You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the proposed permit number when requesting documents or submitting comments.

- *U.S. Mail:* U.S. Fish and Wildlife Service, Endangered Species—HCP Permits, P.O. Box 1306, Room 6093, Albuquerque, NM 87103.
- *Electronically: fw2_hcp_permits@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marty Tuegel, Branch Chief, by U.S. mail at U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6078, Albuquerque, NM 87103; or by telephone at 505–248–6651.

**SUPPLEMENTARY INFORMATION:**

## Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* ESA), we, the U.S. Fish and Wildlife Service, invite the public to comment on an ITP application to take the federally listed American burying-beetle (*Nicrophorus americanus*) during oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

If approved, the permit would be issued to the applicant under the *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.* The original ICP was approved on May 21, 2014, and the ''no significant impact'' finding notice was published in the **Federal Register** on July 25, 2014 (79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on our website at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

## Application Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following application under the ICP, for incidentally taking the federally-listed American burying-beetle. Please refer to the appropriate permit number (TE66214C) when requesting application documents and when submitting comments. Documents and other information the applicant has submitted are available for review, subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

## Permit TE66214C

*Applicant:* Arkoma Resources, LLC, Houston, TX.

Applicant requests a permit for oil and gas upstream and midstream production, including oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

## Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## Authority

We provide this notice under the ESA, section 10(c) (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: January 11, 2018.

**Joy N. Nicholopoulos,**

*Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2018–05589 Filed 3–19–18; 8:45 am]

BILLING CODE 4333–15–P

# DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–SER–CONG–24776; PS.SSELA0303.00.1]**

## Minor Boundary Revision at Congaree National Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Notification of boundary revision.

**SUMMARY:** The boundary of Congaree National Park is modified to include 100.77 acres of land immediately adjacent to the boundary of the national park. The United States will purchase, from a willing seller, a parcel containing 100.77 acres of land. The tract encompasses the north half of Bates Old River and northern uplands east of Highway 601.

**DATES:** The applicable date of this boundary revision is March 20, 2018.

**ADDRESSES:** The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Southeast Region Land Resources Program Center, 1924 Building, 100 Alabama Street SW, Atlanta, Georgia 30303 and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** National Park Service, Anthony Marshall Acting Chief, Southeast Region Land Resources Program Center, 1924 Building, 100 Alabama Street SW, Atlanta, Georgia 30303, telephone 404–507–5657.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 54 U.S.C. 100506, the boundary of Congaree National Park is modified to include 100.77 acres of adjacent land acres identified as Tract 101–81. The boundary revision is depicted on Map No. 178/132,867 dated August 2017.

Specifically, 54 U.S.C. 100506 provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. This boundary revision and subsequent acquisition of Tract 101–81 will enable the National Park Service to manage and protect significant resources located in the Congaree National Park.

Dated: January 4, 2018.

**Stan Austin,**

*Regional Director, Southeast Region.*

[FR Doc. 2018–05575 Filed 3–19–18; 8:45 am]

BILLING CODE 4312–52–P

# DEPARTMENT OF JUSTICE

## Office of the Chief Information Officer

**[OMB Number 1105—NEW]**

## Agency Information Collection Activities; Proposed eCollection eComments Requested

**AGENCY:** Office of the Chief Information Officer, Department of Justice.

**ACTION:** 60 day notice.

**SUMMARY:** The Department of Justice, Office of the Chief Information Officer, is 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:** The Department of Justice encourages public comment and will accept input until May 21, 2018.

**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 Jenna Dee, Project Manager, Justice Management Division, Office of the Chief Information Officer, 145 N Street NE, Room 3W 1405A, Washington, DC 20002 (Phone 202–598–0345)

**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 Office of the Chief Information Officer, 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 collection.

2. *The Title of the Form/Collection:* Tribal Access Program Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is Office of the Chief Information Officer.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Tribal Governments. The U.S. Department of Justice (DOJ) launched the Tribal Access Program for National Crime Information (TAP) provide tribes access to national crime information systems for both civil and criminal purposes. DOJ has developed an application for use by federally recognized tribes interested in participating in TAP.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50 respondents at 60 minutes each.

6. *An estimate of the total public burden (in hours) associated with the collection:* An estimated 50 burden 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: March 15, 2018.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2018–05582 Filed 3–19–18; 8:45 am]

**BILLING CODE 4410–CJ–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Forging Machines

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Forging Machines,'' 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 April 19, 2018.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201712-1218-003* (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–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Forging Machines information collection. Under regulations 29 CFR 1910.218, it is mandatory for covered employers to conduct and to document periodic inspections of forging machines, guards, and point-of-operation protection devices and to mark manually controlled valves and switches. These requirements reduce workers' risks of death or serious injury by ensuring that forging machines used by them are in safe operating condition and that the workers are able to identify manually operated valves and switches. Occupational Safety and Health Act of 1970 sections 2, 6, and 8 authorize this information collection. *See* 29 U.S.C. 651, 655, and 657.

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 1218–0228.

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 March 31, 2018. 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 October 16, 2017 (82 FR 48119).

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 1218–0228. 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–OSHA.

*Title of Collection:* Forging Machines.

*OMB Control Number:* 1218–0228.

*Affected Public:* Private Sector—not for profit institutions.

*Total Estimated Number of Respondents:* 27,700.

*Total Estimated Number of Responses:* 1,440,400.

*Total Estimated Annual Time Burden:* 192,053 hours.

*Total Estimated Annual Other Costs Burden:* $0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: March 13, 2018.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2018–05557 Filed 3–19–18; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

### Agenda

**TIME AND DATE:** 9:30 a.m., Tuesday, April 10, 2018.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

**STATUS:** The two items are open to the public.

**MATTERS TO BE CONSIDERED:**

56526 Railroad Accident Brief—Collision of Two Southwestern Railroad Freight Trains, Roswell, New Mexico, April 28, 2015

57810 Aircraft Accident Report—Collision with Terrain, Hageland Aviation Services, Inc., dba Ravn Connect Flight 3153, Cessna 208B, N208SD, Togiak, Alaska, October 2, 2016

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, April 4, 2018.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

**FOR MORE INFORMATION CONTACT:** Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

**FOR MEDIA INFORMATION CONTACT:** Eric Weiss at (202) 314–6100 or by email at *eric.weiss@ntsb.gov* for the Aircraft Accident Report, and Terry Williams at (202) 314–6100 or by email at *terry.williams@ntsb.gov* for the Railroad Accident Brief.

Dated: Friday, March 16, 2018.

**LaSean McCray,**

*Assistant Federal Register Liaison Officer.*

[FR Doc. 2018–05696 Filed 3–16–18; 11:15 am]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0001]**

### Sunshine Act Meeting Notice

**DATE:** Weeks of March 19, 26, April 2, 9, 16, 23, 2018.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of March 19, 2018**

There are no meetings scheduled for the week of March 19, 2018.

**Week of March 26, 2018—Tentative**

There are no meetings scheduled for the week of March 26, 2018.

**Week of April 2, 2018—Tentative**

*Wednesday, April 4, 2018*

10:30 a.m. Discussion of Management and Personnel Issues (Closed Ex. 2, 6, & 9)

*Thursday, April 5, 2018*

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public); (Contact: Mark Banks: 301–415–3718).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

**Week of April 9, 2018—Tentative**

*Tuesday, April 10, 2018*

10:00 a.m. Briefing on the Annual Threat Environment (Closed Ex. 1)

*Thursday, April 12, 2018*

9:00 a.m. Briefing on Accident Tolerant Fuel (Public); (Contact: Andrew Proffitt: 301–415–1418).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

**Week of April 16, 2018, 2018—Tentative**

There are no meetings scheduled for the week of April 16, 2018.

**Week of April 23, 2018, 2018—Tentative**

*Tuesday, April 24, 2018*

9:00 a.m. Briefing on Advanced Reactors (Public); (Contact: Lucieann Vechioli: 301–415–6035).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

*Thursday, April 26, 2018*

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Nuclear Materials Users Business Lines (Public Meeting); (Contact: Mahmoud Jardaneh: 301–

415–4126 or Soly Soto Lugo: 301–415–7528).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

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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.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: March 16, 2018.

**Denise McGovern,**

*Policy Coordinator,m Office of the Secretary.*

[FR Doc. 2018–05768 Filed 3–16–18; 4:15 pm]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–025 and 52–026; NRC–2008–0252]**

## Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Southern Nuclear Operating Company to withdraw its application dated July 29, 2016, for proposed amendments to Combined License (COL) Nos. NPF–91 and NPF–92 for the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; MEAG Power SPVM, LLC; MEAG Power SPVJ, LLC; MEAG Power SPVP, LLC; and the City of Dalton, Georgia (the licensee), for construction and operation of the VEGP, Units 3 and 4, located in Burke County, Georgia. The amendments would have added an Interim Amendment Request (IAR) Process to License Condition 2.D.(1) of the VEGP, Units 3 and 4, COLs for changes during construction when emergent conditions are present.

**DATES:** March 20, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website: Go to http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@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 (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for amendments was submitted by letter dated July 29, 2016, and supplemented by letter dated January 5, 2017 (ADAMS Accession Nos. ML16211A436 and ML17005A514, respectively).
- *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:** Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301 415–3025; email: *Chandu.Patel@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** Southern Nuclear Operating Company (the licensee) is a holder of two COLs, Nos. NPF–91 and NPF–92, issued to Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; MEAG Power SPVM, LLC; MEAG Power SPVJ, LLC; MEAG Power SPVP, LLC; and the City of Dalton, Georgia, for construction and operation of VEGP, Units 3 and 4, located in Burke County, Georgia. The NRC has granted the licensee's request to withdraw its application dated July 29, 2016, as supplemented by letter dated January 5, 2017.

The proposed amendments would have added an additional license amendment process called an IAR to License Condition 2.D.(1) of the VEGP, Units 3 and 4, COLs. Based on the application and supplemental information the licensee provided, the licensee intended to use the proposed IAR process to obtain expedited approval of requested changes during construction in certain emergent conditions when the licensee finds that a construction activity is not in conformance with the licensing basis, but there is little or no safety significance, and the construction activity cannot be adjusted. The proposed IAR process would have been used to allow construction to proceed until the nonconforming condition is resolved when there is insufficient time to conduct a detailed, technical safety analysis to support a license amendment request, or the preliminary amendment request process was already approved by the Commission.

The NRC staff issued an initial **Federal Register** notice of opportunity to request a hearing on this license amendment request and a proposed no significant hazards consideration determination on October 11, 2016 (81 FR 70184).

Dated at Rockville, Maryland, this 13th day of March 2018.

For the Nuclear Regulatory Commission.

**Jennifer L. Dixon-Herrity,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2018–05568 Filed 3–19–18; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### January 2018 Pay Schedules

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The President has signed an Executive order to implement the January 2018 pay adjustments for certain Federal civilian employees. The Executive order authorizes a 1.4 percent across-the-board increase for statutory pay systems and locality pay increases costing approximately 0.5 percent of basic payroll, reflecting an overall average pay increase of 1.9 percent. This notice serves as documentation for the public record.

**FOR FURTHER INFORMATION CONTACT:** Kristen Foy, Pay and Leave, Employee Services, U.S. Office of Personnel Management; (202) 606–4194 or *pay-leave-policy@opm.gov.*

**SUPPLEMENTARY INFORMATION:** On December 22, 2017, the President signed Executive Order (E.O.) 13819 (82 FR 61431), which implemented the January 2018 pay adjustments. The Executive order provides an overall average pay increase of 1.9 percent for the statutory pay systems. This is consistent with the President's alternative pay plan issued under 5 U.S.C. 5303(b) and 5304a on August 31, 2017.

The publication of this notice satisfies the requirement in Section 5(b) of E.O. 13819 that the Office of Personnel Management (OPM) publish appropriate notice of the 2018 locality payments in the **Federal Register**.

Schedule 1 of E.O. 13819 provides the rates for the 2018 General Schedule (GS) and reflects a 1.4 percent increase from 2017. Executive Order 13819 also includes the percentage amounts of the 2018 locality payments. (See Section 5 and Schedule 9 of Executive Order 13819.)

General Schedule employees receive locality payments under 5 U.S.C. 5304. Locality payments apply in the United States (as defined in 5 U.S.C. 5921(4)) and its territories and possessions. In 2018, locality payments ranging from 15.37 percent to 39.28 percent apply to GS employees in the 47 locality pay areas. The 2018 locality pay area definitions can be found at: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/*.

The 2018 locality pay percentages became effective on the first day of the first pay period beginning on or after January 1, 2018 (January 7, 2018). An employee's locality rate of pay is computed by increasing his or her scheduled annual rate of pay (as defined in 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.609.)

Executive Order 13819 establishes the new Executive Schedule (EX), which incorporates a 1.4 percent increase required under 5 U.S.C. 5318 (rounded to the nearest $100). By law, Executive Schedule officials are not authorized to receive locality payments.

Executive Order 13819 establishes the 2018 range of rates of basic pay for members of the Senior Executive Service (SES) under 5 U.S.C. 5382. The minimum rate of basic pay for the SES is $126,148 in 2018. The maximum rate of the SES rate range is $189,600 (level II of the Executive Schedule) for SES members who are covered by a certified SES performance appraisal system and $174,500 (level III of the Executive Schedule) for SES members who are not covered by a certified SES performance appraisal system.

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range was increased by 1.4 percent ($126,148 in 2017), which is the amount of the across-the-board GS increase. The applicable maximum rate of the SL/ST rate range is $189,600 (level II of the Executive Schedule) for SL or ST employees who are covered by a certified SL/ST performance appraisal system and $174,500 (level III of the Executive Schedule) for SL or ST employees who are not covered by a certified SL/ST performance appraisal system. Agencies with certified performance appraisal systems for SES members and employees in SL and ST positions must also apply a higher aggregate limitation on pay—up to the Vice President's salary ($243,500 in 2018.)

Note that Section 20101 of subdivision 3 of division B of the Bipartisan Budget Act of 2018 (Pub. L. 115–123, February 9, 2018) amended the Continuing Appropriations Act, 2018, division D of Public Law 115–56. Under section 101(a) of that Act, the authority and conditions provided in FY 2017 appropriations laws continue to apply during the period specified in the Act, as amended. This language means that the freeze on the payable pay rates for the Vice President and certain senior political appointees at 2013 levels—as provided in section 738 of division E of the Consolidated Appropriations Act, 2017, Public Law 115–31, May 5, 2017—continues through March 23, 2018, or the date of enactment of new appropriations legislation. Future Congressional action will determine whether the pay freeze continues beyond March 23, 2018. Until such time, the OPM guidance on the 2017 pay freeze for certain senior political officials is generally applicable in applying the pay freeze in 2018. (See OPM guidance memoranda CPM 2017–05 at *https://www.chcoc.gov/content/continued-pay-freeze-certain-senior-political-officials,* CPM 2018–02 at *https://www.chcoc.gov/content/continued-pay-freeze-certain-senior-political-officials-1,* CPM 2018–03 at *https://www.chcoc.gov/content/pay-and-leave-employees-affected-lapse-appropriations-and-continued-pay-freeze-certain,* and CPM 2018–05 at *https://www.chcoc.gov/content/pay-employees-affected-lapse-appropriations-and-continued-pay-freeze-certain-senior.*)

Executive Order 13819 provides that the rates of basic pay for administrative law judges (ALJs) under 5 U.S.C. 5372 are increased by 1.4 percent, rounded to the nearest $100 in 2018. The rate of basic pay for AL–1 is $164,200 (equivalent to the rate for level IV of the Executive Schedule). The rate of basic pay for AL–2 is $160,100. The rates of basic pay for AL–3/A through 3/F range from $109,600 to $151,700.

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, these rates of basic pay are increased by 1.4 percent in 2018.

On November 22, 2017, OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and OPM) that continues GS locality payments for ALJs and certain other non-GS employee categories in 2018. By law, EX officials, SES members, employees in SL/ST positions, and employees in certain other equivalent pay systems are not authorized to receive locality payments. (**Note:** An exception applies to certain grandfathered SES, SL, and ST employees stationed in a nonforeign area on January 2, 2010. See CPM 2009–27 at *https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act.*) The memo is available at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/continuation-of-locality-payments-for-non-general-schedule-employees-november-22–2017.pdf.*

On December 22, 2017, OPM issued a memorandum (CPM 2017–18) on the January 2018 pay adjustments. (See *https://www.chcoc.gov/content/january-2018-pay-adjustments.*) The memorandum transmitted Executive

Order 13819 and provided the 2018 salary tables, locality pay areas and percentages, and information on general pay administration matters and other related information. The ''2018 Salary Tables'' posted on OPM's website at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/* are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

U.S. Office of Personnel Management.

**Jeff T.H. Pon,**

*Director.*

[FR Doc. 2018–05611 Filed 3–19–18; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Application for Deferred Retirement (for Persons Separated on or After October 1, 1956), OPM 1496A

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** Retirement Operations, Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the revision of a currently approved information collection, Application for Deferred Retirement (for persons separated on or after October 1, 1956), OPM 1496A.

**DATES:** Comments are encouraged and will be accepted until April 19, 2018.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0121) was previously published in the **Federal Register** on November 3, 2017, at 82 FR 51306, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

OPM Form 1496A is used by eligible former Federal employees to apply for a deferred Civil Service annuity.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application for Deferred Retirement (for persons separated on or after October 1, 1956).

*OMB Number:* 3206–0121.

*Frequency:* On occasion.

*Affected Public:* Individual or Households.

*Number of Respondents:* 2,800.

*Estimated Time per Respondent:* 1 hour.

*Total Burden Hours:* 2,800.

Office of Personnel Management.

**Jeff T.H. Pon,**

*Director.*

[FR Doc. 2018–05610 Filed 3–19–18; 8:45 am]

**BILLING CODE 6325–38–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33048; 812–14788]**

### Destra Exchange-Traded Fund Trust, et al.

March 14, 2018.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure; and (g) certain Funds to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

**APPLICANTS:** Destra Exchange-Traded Fund Trust (the ''Trust''), a Massachusetts business trust, which will register under the Act as an open-end management investment company with multiple series, Destra Capital Advisors LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Destra Capital Investments LLC (the ''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

**FILING DATES:** The application was filed on June 27, 2017 and amended on December 21, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: One North Wacker Drive, 48th Floor, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units (other than pursuant to a distribution reinvestment program, as described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units (other than pursuant to a dividend reinvestment program).

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The

[1] Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other existing or future open-end management investment company or existing or future series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each of the foregoing and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05552 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82874; File No. SR–CboeBZX–2018–017]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Market Data Section of the Fee Schedule Applicable to its Equity Options Platform

March 14, 2018.

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 March 6, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 the Market Data section of its fee schedule applicable to its equity options platform (''BZX Options'') to adopt fees for a new data feed to be known as BZX Options Top.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

### 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

The BZX Options Top feed is a data feed that offers top of book quotations and execution information based on options orders entered into the System.[5] The Exchange proposes to amend its fee schedule to incorporate fees for distribution of eh BZX Options Top feed.[6] The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors;[7] (ii) Usage Fees for both Professional[8] and Non-Professional[9] Users; and (iii)

[5] Exchange Rule 21.15(b)(2). *See also* Securities Exchange Act Release No. 82776 (February 26, 2018) (SR–CboeBZX–2018–013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the BZX Options Top Feed).

[6] The Exchange also proposed to rename Multicast Pitch as BZX Options Depth to reflect a recent change to the Exchange's rules that was filed with the Commission. *Id.*

[7] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.* An ''Internal Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.'' *Id.* An ''External Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.'' *Id.*

[8] A ''Professional User'' is defined as ''any User other than a Non-Professional User.'' *Id.*

[9] A ''Non-Professional User'' is defined as ''a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the

an Enterprise Fee. The Exchange is proposing identical fees for the BZX Options Top feed as to those currently in place for the BZX Options Depth feed.

*Distribution Fees.* As proposed, each Internal Distributor that receives BZX Options Top shall pay a fee of $3,000 per month. Each External Distributor that receives BZX Options Top shall pay a fee of $2,000 per month. The Exchange also proposes to make clear in its fee schedule that where a Distributor acts as both an External and Internal Distributor of BZX Options Top that it will pay the greater of the two Distribution fees for internal or external use and not be charged both fees each month.

*User Fees.* The Exchange proposes to charge Internal Distributors and External Distributors that redistribute the BZX Options Depth feed different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $30.00 per User. Non-Professional Users will be assessed a monthly fee of $1.00 per User. The proposed rates are identical to then those currently charged for the BZX Options Depth feed. Since both the BZX Option Depth Feed and BZX Options Top feed both include top-of-book information, the Exchange proposes to not charge separate per User fees for each product. As a result, one User fee would allow access to the BZX Options Top Feed and the BZX Options Depth Feed. The Exchange proposes to amend its fee schedule accordingly.

Distributors that receive the BZX Options Depth feed will be required to count every Professional User and Non-Professional User to which they provide the market data product(s), the requirements for which are identical to that currently in place for BZX Options Depth. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. However, because one User fee would allow access to the BZX Options Top Feed and the BZX Options Depth Feed, Distributors that provide a person or device access to both the BZX Options Top Feed and the BZX Options Depth Feed need only to count that person or device as a single User and not a User of both market data products. Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the market data product, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the market data product. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the market data product, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the market data product (*e.g.,* a single User has multiple passwords and user identifications), the Distributor should report all of those methods as an individual User.
- Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If a Distributor entitles one or more individuals to use the same device, the Distributor should include only the individuals, and not the device, in the count.

*Enterprise Fee.* The Exchange also proposes to establish a $3,500 per month Enterprise Fee that will permit a recipient firm who receives BZX Options Depth from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BZX Options Top at $30.00 per month, then that recipient firm will pay $450,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $3,500 for an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls the display of BZX Options Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange intends to implement the proposed changes to its fee schedule on March 9, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data and that the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [12] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[13] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. BZX Options Depth is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time

Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.'' *Id.*

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 242.603.

and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BZX Options Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to distribute BZX Options Depth, prospective Users likely would not subscribe to, or would cease subscribing to BZX Options Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.

*Distribution Fee.* The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution, the fee for both are equal for each of the market data products subject to this proposal. The proposed amendment to the Internal Distributor fee is equitable and reasonable as the proposed fees is similar to fees currently charged by the Nasdaq Stock Market LLC (''Nasdaq'') for their options top-of-book data product. Nasdaq currently charges external distributors of BONO,[14] $2,000 per month.[15] Nasdaq's fee for external distribution is identical to that proposed by the Exchange herein. In addition, the Chicago Board Options Exchange, Incorporated (''CBOE'') charges a monthly fee of $9,000 to internal and external distributors of its top-of-book data.[16]

The Exchange proposes to charge External Distributors lower fees than Internal Distributors to promote broader distribution of exchange data. The Exchange notes that External Distributors redistribute BZX Options Top to those outside of their organization while Internal Distributors distribute BZX Options Top within their own organization. Charging lower fees for external distribution should encourage Distributors, such as market data vendors who solely redistribute market data, to subscribe to BZX Options Top as an External Distributor, therefore, expanding the distribution network of the Exchange's data.

*User Fees.* The Exchange believes that implementing the Professional and Non-Professional User fees for BZX Options Top are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BZX Options Depth is reasonable because it provides an additional method for retail investors to access BZX Options Top data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Cboe One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[17] Offering BZX Options Top to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. The requirement that Distributors count every Professional User and Non-Professional User to which they provide the market data product(s) is also equitable and reasonable because the requirements are identical to that currently in place for other market data products offered by the Exchange. Also, the Exchange believes it is reasonable to charge one User fee for access to the BZX Options Top Feed and the BZX Options Depth Feed as the BZX Options Depth Feed also included top-of-book data.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by Nasdaq. Specifically, Nasdaq charges a fee of $40 per month to professional users and $1.00 per month to non-professional users of its BONO feed.[18] Each of these fees charged by Nasdaq are either equal to or higher than that proposed herein.

*Enterprise Fee.* The proposed Enterprise Fee for BZX Option Top is equitable and reasonable as the fees proposed could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. Meanwhile, the Exchange notes that Nasdaq does not offer such potential fee relief for its BONO feed.[19] If a recipient firm has a smaller number of Professional Users of BZX Options Top, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BZX Options Top, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise

[14] BONO stands for Best of Nasdaq Options (''BONO$^{SM}$'') is a data feed that provides The Nasdaq Options Market (''NOM'') Best Bid and Offer and last sale information for trades executed on NOM. *See* Nasdaq Sec. 4(d), NASDAQ Options Market Data Distributor Fees *available at http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing.*

[15] *See* Nasdaq Sec. 4(a), NASDAQ Options Market Data Distributor Fees *available at http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing.*

[16] *See* CBOE Market Data Express, LLC (MDX) CBOE Streaming Markets Fee Schedule *available at https://www.cboe.org/publish/mdxfees/mdxfeescheduleforcboedatafeeds.pdf* [sic].

[17] *See* Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); *and* 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09). *See also, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); *and* Nasdaq Rules 7023(b), 7047.

[18] *See* Nasdaq Sec. 4(a), NASDAQ Options Market Data Distributor Fees *available at http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing.*

[19] *Id.*

Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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, as amended. The Exchange's ability to price BZX Options Top is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BZX Options Top competes with a number of alternative products. For instance, BZX Options Top does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks (''ECN'') that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to BZX Options last sale and depth-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BZX Options Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

*(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 written comments on the proposed rule change.

## 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 [20] and paragraph (f) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–017 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-CboeBZX–2018–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–017 and should be submitted on or before April 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05563 Filed 3–19–18; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82870; File No. SR–CHX–2018–001]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt the Route QCT Cross Routing Option

March 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2018, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''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 change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') to adopt the Route QCT Cross routing option. The text of this proposed rule change is available on the Exchange's website at *http://www.chx.com/regulatory-operations/rule-filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to effect the following amendments to the CHX Rules to adopt the Route QCT [3] Cross routing option:

- Adopt Article 19, Rule 4(a)(1) describing the proposed ''Route QCT Cross'' routing option.
- Amend the definition of ''Routable Order'' under Article 1, Rule 1(oo), the definition of ''cross order'' under Article 1, Rule 2(a)(2) and make various amendments to Article 19 (CHX Routing Services) to permit the routing of cross orders marked Route QCT Cross.
- Other non-substantive clarifying amendments.

(1) Background

Currently, Routable Orders submitted to the CHX matching system (''Matching System'') [4] for execution are routed away from the Matching System automatically if a Routing Event [5] is triggered. All Routable Orders [6] are limit orders only, and thus market [7] and cross orders [8] are never routable. Moreover, the Exchange does not permit orders to be directly routed to an away Trading Center [9] without initially being submitted to the Matching System.

A large percentage of the Exchange's average daily volume (''ADV'') is attributed to cross orders that are component orders to Qualified Contingent Trades (''QCT Crosses''). Mechanically, the Matching System handles QCT Crosses like simple crosses (*i.e.,* cross orders without any modifiers attached), except that the Matching System permits QCT Crosses to trade-through protected quotes of away markets as QCT Crosses are exempt from the trade-through prohibition of Rule 611 of Regulation NMS.[10] Therefore, like simple crosses, all QCT Crosses are handled IOC [11] and can never rest on the CHX book. Moreover, like simple crosses, a QCT Cross submitted to the Matching System will be cancelled back to the order sender as ''blocked'' if a precedent limit order priced at or better than the QCT Cross is resting on the CHX book,[12] except that a QCT Cross priced at the top of the CHX book (*i.e.,* the best-ranked order on the CHX book pursuant to Article 20, Rule 8(b)) that qualifies for Cross With Size [13] handling will be permitted to execute. However, unlike simple crosses, which may be submitted by any Participant,[14] QCT Crosses may only be submitted by Institutional Brokers (''IBs'').[15]

In the event a QCT Cross is blocked and cancelled, the IB will usually cause the order to be executed over-the-counter (''OTC''). The OTC trade would then be reported to a Trade Reporting Facility (''TRF'') and cleared either through the Exchange's optional away trade clearing service,[16] which may only be used by IBs, or another clearing service. The Exchange assesses a fee for use of the optional away trade clearing service,[17] which is identical to the fee for a QCT Cross executed within the Matching System.[18]

In recent years, the percentage of the Exchange's average daily volume (''ADV'') attributed to cross orders has decreased, which has been offset by an increase in single-sided matching activity.[19] This has primarily been driven by enhanced resting liquidity on the CHX book. Consequently, as the number of orders resting on the CHX book have increased, and the price of such orders have become more aggressive, blocked crosses have become more frequent.[20]

Considering this trend, the Exchange is now proposing to adopt the Route QCT Cross routing option, which will permit IBs [21] to directly route a QCT Cross to a non-affiliated third-party

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 4, 2008) (''Modified QCT Exemptive Order''); *see also* CHX Article 1, Rule 2(a)(2) defining ''cross order''; *see also* CHX Article 1, Rule 2(b)(2)(E) defining ''Qualified Contingent Trade.''

[4] The Matching System is part of the Exchange's ''Trading Facilities,'' as defined under CHX Article 1, Rule 1(z).

[5] *See* CHX Article 19, Rule 3(a)(1)–(5).

[6] *See* CHX Article 1, Rule 1(oo) defining ''Routable Order.''

[7] *See* CHX Article 1, Rule 2(a)(3) defining ''market order.''

[8] *See* CHX Article 1, Rule 2(a)(2) defining ''cross order.''

[9] *See* CHX Article 1, Rule 1(nn) defining ''Trading Center.''

[10] *See supra* note 3.

[11] *See* CHX Article 1, Rule 2(a)(2)

[12] *See* CHX Article 1, Rule 2(a)(2); *see also* CHX Article 20, Rule 8(e)(1).

[13] *See* CHX Article 1, Rule 2(g)(1).

[14] *See* CHX Article 1, Rule 1(s) defining ''Participant.''

[15] *See* CHX Article 1, Rule 2(b)(2)(E); *see also* CHX Article 1, Rule 1(n) defining ''Institutional Broker.''

[16] *See* CHX Article 21, Rule 6.

[17] *See* Section E.7 of the CHX Fee Schedule.

[18] *See* Section E.3 of the CHX Fee Schedule.

[19] In 2014, the percentage of total CHX executed volume attributed to single-sided orders (''CHX Single-sided Volume'') was 11.03%. In 2015 and 2016, this percentage increased to 17.39% and 19.69%, respectively. In 2017, as of December 1, 2017, CHX Single-sided Volume decreased to 12.05%, due primarily to the withdrawal of certain top CHX liquidity providers in late 2016.

[20] In 2014, 6.03% of all cross orders submitted to the Matching System were cancelled back to the order sender. In 2015, 2016 and 2017 (as of December 1, 2017), this percentage increased to 9.72%, 11.47% and 12.81%, respectively.

[21] The Exchange is proposing to limit use of Route QCT Cross to IBs to be consistent with the fact that only IBs are currently permitted to submit QCT Crosses to the Matching System. *See* CHX Article 1, Rule 2(b)(2)(E).

broker-dealer designated by the IB (''designated executing broker'') for execution. The purpose of Route QCT Cross is to provide IBs with a routing option that will simplify and streamline the OTC execution process for QCTs,[22] which will enhance the value of IB registration with the Exchange. As such, the Exchange believes that the proposal will facilitate the ability of IBs to execute QCT Crosses in compliance with the requirements of the Modified QCT Exemptive Order [23] and CHX Rules,[24] which fosters cooperation and coordination with persons engaged in facilitating transactions in securities in furtherance of Section 6(b)(5) of the Act.[25]

(2) Operation of Route QCT Cross

In sum, a Route QCT Cross order submitted by an IB will be handled like a current Routable Order,[26] except that the Route QCT Cross order will never be submitted to the Matching System for execution. Specifically, upon receipt of a Route QCT Cross order, the Exchange will cause the order to be routed IOC from the Exchange, through CHXBD, LLC (''CHXBD''), the Exchange's affiliated routing broker, to the designated executing broker identified by the IB.[27] The relationship between a designated executing broker and CHXBD will be governed by applicable CHX Rules [28] and customary interbroker agreements, such as fully-disclosed clearing and customer agreements. At all times, the use of Route QCT Cross will be optional.

While the Matching System, CHX Routing Services and CHXBD are each regulated as a ''facility'' of the Exchange,[29] as defined under Section 3(a)(2) of the Act,[30] the Exchange submits that a designated executing broker would not be facility of the Exchange for the reasons described below. Therefore, the execution of Route QCT Cross orders by the designated executing broker would not be subject to the Exchange's book and execution priority rules.[31]

Specifically, a designated executing broker would not be owned by, or affiliated or associated with, the Exchange or CHXBD, and thus a designated executing broker would not be a premise or property of the Exchange. In addition, while the Exchange would provide the routing infrastructure to permit IBs to execute QCTs OTC, the Exchange does not have a ''right'' to ''use'' [32] the property or services of the designated executing broker (nor does the designated executing broker have a right to use the property or services of the Exchange) for the following reasons:

- An IB has sole discretion as to the designated executing broker to which its Route QCT Cross order will be routed.
- Use of the Route QCT Cross routing option is optional. The Exchange will have no discretion on when and if the Route QCT Cross will be used.
- Route QCT Cross orders are not eligible for execution within the Matching System and could be used without regard to the state of the CHX book. Therefore, the designated executing broker cannot be considered a mere extension of the Matching System.

The Exchange notes that Route QCT Cross is similar to the following routing options of other national securities exchanges:

- *Directed Order.* Like Route QCT Cross, the ''Directed Order'' routing option offered by the Nasdaq Stock Market (''Nasdaq'') permits an order sender to route an order to another market center while bypassing the Nasdaq's order book,[33] which may result in the routed order executing at a price through Nasdaq's top of book.
- *DRT.* Like Route QCT Cross, the ''DRT'' routing option offered by the Cboe BYX and Cboe BZX exchanges permit an order to be routed to one or more away alternative trading systems.[34]

(3) Proposed Article 19, Rule 4 (Routing Options) and Related Amendments

Adoption of the Route QCT Cross routing option requires amendments to the CHX Rules to describe its functionality and to permit cross orders to be routed through the CHX Routing Services. As such, the Exchange proposes the following amendments to the CHX Rules.

The Exchange proposes to adopt Article 19, Rule 4 (Routing Options). Proposed paragraph (a) provides that routing options may be combined with all available order types, modifiers and related terms, except for order types, modifiers, and related terms that are inconsistent with the terms of a routing option. Paragraph (a) also provides that the Exchange may activate or deactivate any routing option at its discretion and, if practicable, after notice to Participants.

Thereunder, proposed paragraph (a)(1) provides that Route QCT Cross is a routing option, which may only be utilized by Institutional Brokers, that instructs the Exchange to route a cross order marked QCT directly to a non-affiliated third-party broker-dealer designated by the Institutional Broker without submitting the order into the Matching System for execution. Also, each Institutional Broker is permitted to identify only one designated executing broker to which all Route QCT Cross orders submitted by the Institutional Broker shall be routed. Furthermore, prior to the Exchange accepting any Route QCT Cross orders directed to a specific designated executing broker, the Exchange shall confirm that the designated executing broker has established connectivity to the Exchange's routing systems. In addition, the Institutional Broker shall be responsible for all away execution fees resulting from the execution of Route QCT Cross orders, including any guaranteed payments to its designated executing broker.[35] Moreover, Route

[22] CHX Article 19, Rule 1.

[23] *See supra* note 3.

[24] *Id.*

[25] 15 U.S.C. 78f(b)(5).

[26] *See* CHX Article 1, Rule 1(oo).

[27] In the event the proposed rule change is approved and becomes operative, IBs will be permitted to identify only one designated executing broker to which all Route QCT Cross orders submitted by the IB will be routed, subject to additional requirements, as described below.

[28] *See e.g.,* CHX Article 19, Rule 2(a).

[29] *See* CHX Article 1, Rule 1(z); *see also* CHX Article 19, Rule 2(a)(1).

[30] 15 U.S.C. 78c(a)(2). ''The term ''facility'' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' *Id.*

[31] *See* CHX Article 20, Rules 8(b) and (d).

[32] 15 U.S.C. 78c(a)(2).

[33] '''Directed Order' is an Order designed to use a routing strategy under which the Order is directed to an automated trading center (as defined in Regulation NMS) other than Nasdaq, as directed by the entering party, without checking the Nasdaq Book.'' *See* Nasdaq Equities Rule 4758(a)(1)(A)(ix).

[34] DRT is a ''a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing.'' *See* Cboe BYX Rule 11.13(b)(3)(D); *see also* Cboe BZX Rule 11.13(b)(3)(D). Both Cboe BYX and BZX have ''the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.'' *See* Cboe BYX Rule 11.13(b)(3); *see also* Cboe BZX Rule 11.13(b).

[35] For example, the Exchange anticipates that a typical designated executing broker would require a per execution fee and a guaranteed monthly minimum that would be offset by any executions fees collected during the month. These fees would be assessed to CHXBD, which would in turn pass on the fees to the relevant IBs. In the event a guaranteed payment is due for a given month (*i.e.,* the guaranteed monthly minimum was not met), the Exchange would divide the balance equally among the IBs that had identified the broker as the designated executing broker at any point during that month. For example, if there were two IBs that each designated Broker A as its designated executing broker at any point during the month of November 2018 and a guaranteed payment of

Continued

QCT Cross orders shall be routed IOC and that a Route QCT Cross order that could not be executed by a designated executing broker, for any reason,[36] shall be cancelled back to the original order sender.

As Route QCT Cross orders will be routed away from the Exchange without being submitted to the Matching System for execution, the Exchange proposes to amend Article 19, Rules 1(a) and (c) to replace the term ''Matching System'' with ''Exchange.'' Thus, amended Rule 1(a) would provide, in pertinent part, that Routable Orders that have been submitted to, and accepted by, the Exchange may be routed from the Exchange to other Trading Centers pursuant to this Article 19. Amended Rule 1(c) would provide, in pertinent part, that Routable Orders submitted to the Exchange are firm orders, pursuant to Article 20, Rule 3.

Similarly, the Exchange proposes to amend Article 1, Rule 2(a) to replace the term ''Matching System'' with ''Exchange,'' as a Route QCT Cross order is a routable cross order marked QCT that is not eligible to be submitted to the Matching System for execution. Thus, amended Rule 2(a) would provide in pertinent part that the order types described under Article 20, Rule 2(a) ''shall be accepted by the Exchange, subject to the requirements of Article 20, Rule 4.''

Moreover, since Route QCT Cross orders are a subset of cross orders that will not be handled IOC upon receipt by the Exchange, and all cross orders currently received by the Exchange are deemed to have been received IOC, the Exchange proposes to amend the definition of ''cross orders'' under Article 1, Rule 2(a)(2) to provide that all cross orders *submitted to the Matching System for execution* shall be deemed to have been received IOC.

Since the cross orders are not currently Routable Orders, the Exchange proposes to amend Article 1, Rule 1(oo) by adopting paragraph (oo)(2), which expands the definition of Routable Orders to include any order marked by a routing option listed under proposed Article 19, Rule 4 (*i.e.,* Route QCT Cross). Also, the Exchange proposes to eliminate the word ''incoming'' from proposed Rule 1(oo)(1), as it is redundant in light of the proposed clarifying amendments to Article 19, Rule 3 described below. Thus, amended Article 1, Rule 1(oo) would provide that ''Routable Order'' means: (1) Any limit order, as defined under Article 1, Rule 2(a)(1), of any size, not marked by any order modifiers or related terms listed under Article 1, Rule 2 that prohibit the routing of the order to another Trading Center; provided, however, that during a SNAP Cycle,[37] participating SNAP Eligible Orders are always Routable Orders; or (2) any order marked by a routing option listed under proposed Article 19, Rule 4.

(4) Amended Article 19, Rule 3 (Mandatory Routing Events)

Current Article 19, Rule 3 (Routing Events) describes mandatory routing for Routable Orders submitted to the Matching System, whereas proposed Article 19, Rule 4 would list routing options, such as Route QCT Cross, which must be affirmatively selected by the order sender. To clarify this distinction, the Exchange proposes to amend the title to Article 19, Rule 3 from ''Routing Events'' to ''Mandatory Routing Events'' and to amend Article 19, Rule 3(a) to provide that a Routable Order that is submitted to the Matching System shall be routed away from the Matching System pursuant to the CHX Routing Services if a Routing Event is triggered.

Moreover, the Exchange proposes additional non-substantive amendments to Article 19, Rules 3(a)(1)–(5) to clarify the current operation of the current Routing Events.[38] Amended paragraph (a)(1) provides that an incoming limit Routable Order shall be routed away to permit its display and/or execution on the Exchange in compliance with Rules 610(d) and 611 of Regulation NMS and, for the duration of the Pilot Period to coincide with the Pilot Period for the Regulation NMS Plan to Implement a Tick Size Pilot (''Plan''),[39] the Trade-at Prohibition described under the Plan.

Amended paragraph (a)(2) provides that an incoming limit Routable Order for an Odd Lot shall be routed away to prevent its execution within the Matching System if it would trade-through a Protected Quotation of an external market.

Amended paragraph (a)(3) provides that (3) an incoming limit Routable Order marked Do Not Display or an incoming limit Routable Order for an Odd Lot that could not be displayed (''incoming undisplayed limit Routable Order'') shall be routed away to execute against any Protected Quotation(s) of external market(s) priced at or better than the limit price of the incoming undisplayed limit Routable Order if there are no contra-side resting orders on the CHX book against which the incoming undisplayed limit Routable Order could execute.

Amended paragraph (a)(4) provides that Routable Order(s) shall be routed away to permit orders to be executed within the Matching System at the SNAP Price, as defined under Article 1, Rule 1(rr), in compliance with Regulation NMS. Also, orders routed away pursuant to this paragraph (a)(4) shall be priced -1- at the SNAP Price or, -2- if the SNAP Price is priced at an increment smaller than the relevant minimum price increment, at the minimum price increment less aggressive than the SNAP Price.

Amended paragraph (a)(5) provides that (5) Routable Order(s) that could not be matched within the Matching System during a SNAP Cycle, as described under Article 18, Rule 1(b), shall be routed away at the SNAP Price to execute against Protected Quotations of external markets priced at the SNAP Price.

(5) Operative Date

In the event the proposed rule change is approved, the proposed rule change shall become operative pursuant to notice to Participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[40] and furthers the objectives of Section 6(b)(1)[41] in particular, in that it would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules

$2,000 became due to Broker A for November 2018, each IB would be assessed a fee of $1,000 for November 2018.

[36] The Exchange notes that a Route QCT Cross order will most likely be executed upon receipt by a designated executing broker. In the unlikely event a Route QCT Cross order is cancelled by a designated executing broker, such an event would most likely be related to systems issues at a designated executing broker or a regulatory prohibition (*e.g.,* declaration of a market wide trading halt in the security during the time the Route QCT Cross order was in flight to a designated executing broker). A Route QCT Cross order would not be cancelled for reasons related to the state of a designated executing broker's order book.

[37] *See* CHX Article 18, Rule 1.

[38] For a comprehensive description of the Routing Events described under Article 19, Rules 3(a)(1)–(3), *see* Exchange Act No. 73150 (September 19, 2014), 79 FR 57603 (September 25, 2014) (SR–CHX–2014–15). For a comprehensive description of the Routing Events described under Article 19, Rules 3(a)(4) and (5), *see* Exchange Act Release No. 75346 (July 1, 2015), 80 FR 39172 (July 8, 2015) (SR–CHX–2015–03).

[39] *See* CHX Article 20, Rule 13; *see also* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); *see also* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

[40] 15 U.S.C. 78f(b).

[41] 15 U.S.C. 78f(b)(1).

and regulations thereunder, and the rules of the Exchange.

Specifically, the Exchange believes that the non-substantive amendments to Article 19, Rule 3 will clarify the operation of the mandatory Routing Events described thereunder, as distinguished from the optional Route QCT Cross routing option described under proposed Article 19, Rule 4(a)(1). Similarly, the various amendments to provide that the Route QCT Cross routing option will result in Routable Orders being routed away from the ''Exchange'' generally and to specifically provide when orders would be routed away from the Matching System will clarify how the different types of Routable Orders will be routed away. In addition, the proposal to permit the Exchange to activate or deactivate the routing options under proposed Article 19, Rule 4 at its discretion and, if practicable, after notice to Participants, would be consistent with the Exchange's current authority to activate and deactivate certain order types, modifiers and terms pursuant to Article 20, Rule 4(b). Since the proposed Route QCT Cross routing option is an order type (albeit one that cannot be utilized within the Matching System), the Exchange believes that harmonizing these provisions under proposed Article 19, Rule 4 and current Article 20, Rule 4(b) would clarify the Exchange's discretionary authority with respect to order types, modifiers and related terms.

Accordingly, the Exchange believes that the amendments will better enable the Exchange to enforce compliance by Participants and its associated persons with CHX Rules in furtherance of the objectives of Section 6(b)(1) of the Act.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act [42] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed Route QCT Cross routing option will foster cooperation and coordination with persons engaged in facilitating transactions in securities by providing Participants with an additional execution option for QCT Crosses, which will enhance their ability to coordinate the execution of QCT Crosses in a timely manner with other market participants that are handling related component orders, as required by the Modified QCT Exemptive Order and CHX Rules.[43] Moreover, given that that investors typically utilize QCTs to execute exceptionally large trades and to manage the substantial risk inherent to large positions, the Exchange submits that the proposed Route QCT Cross routing option will also protect investors and the public interest by facilitating the execution (and hedging) of such important transactions.

In addition, since current CHX Rules only permit IBs to submit QCT Crosses to the Matching System,[44] restricting use of the Route QCT Cross option to IBs only would be consistent with current CHX Rules and thus not unfairly discriminatory. Moreover, the proposal is not designed to be unfairly discriminatory as each IB will be (1) permitted to select the designated executing broker of its choice, subject to certain requirements applicable to all prospective designated executing brokers (*e.g.,* the designated executing broker is a non-affiliated third-party broker-dealer and must establish connectivity to the Exchange's routing systems) and (2) responsible for all execution fees and guaranteed payments due to its designated executing broker, the latter of which may be divided equally among IBs that select the same designated executing broker during a relevant fee measurement period.[45]

Accordingly, the Exchange believes that all proposed amendments to implement the Route QCT Cross routing option, including amendments to Article 1, Rule 1(oo) and Article 1, Rule 2(a)(2) to permit cross orders to become Routable Orders, are consistent with 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 that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will enhance competition among the exchanges by improving QCT Cross execution options for Institutional Brokers. Moreover, the Exchange notes that other national securities exchanges offer order routing options that permit an order sender to bypass the exchange's own limit order book [46] or allows the exchange to route an order to alternative trading systems designated by the exchange.[47] As such, the proposed rule change is a competitive proposal that will enhance competition among the national securities exchanges to the benefit of market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2018–001 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–CHX–2018–001. 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

[42] 15 U.S.C. 78f(b)(5).

[43] *See supra* note 3.

[44] *See supra* note 21.

[45] *See supra* note 35.

[46] *See* Nasdaq Equities Rule 4758(a)(1)(A)(ix), *supra* note 33.

[47] *See e.g.,* Cboe BYX Rule 11.13(b)(3) and 11.13(b)(3)(D), *supra* note 34.

post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2018–001 and should be submitted on or before April 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05560 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

[48] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82872; File No. SR–CboeBZX–2017–011]**

## Self-Regulatory Organizations; CboeBZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade the Common Shares of Beneficial Interest of the PowerShares Income Builder Portfolio, a Series of PowerShares Exchange-Traded Fund Trust II

March 14, 2018.

### I. Introduction

On December 1, 2017, CboeBZX Exchange, Inc. (''Exchange'' or ''BZX'') 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 list and trade the common shares of beneficial interest of the PowerShares Income Builder Portfolio (''Fund''), a series of PowerShares Exchange-Traded Fund Trust II (''Trust''), under BZX Rule 14.11(c)(3). The proposed rule change was published for comment in the **Federal Register** on December 20, 2017.[3] On January 22, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 6, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission has received no comments on the proposal. The Commission is approving the proposed rule change, as modified by Amendment No. 1.

### II. Exchange's Description of the Proposal[7]

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(c)(5), which governs the listing and trading of Index Fund Shares based on equity and fixed income securities. The Fund will be a passively managed, index-based exchange-traded fund (''ETF''), and it is a series of the Trust. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its registration statement on Form N–1A (''Registration Statement'') with the Commission.[8] Invesco PowerShares Capital Management LLC will be the investment adviser (''Adviser''), and Invesco Advisers, Inc. will be the investment sub-adviser (''Sub-Adviser''), to the Fund. The Adviser and the Sub-Adviser are affiliated with a broker-dealer and have implemented, and will maintain, a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition of, or changes to, the Fund's portfolio.

The Fund's investment objective is to seek to track the investment results (before fees and expenses) of the Goldman Sachs Bond Buyers Equity Basket Index (''Underlying Index''). The Underlying Index is designed to measure the performance of a hypothetical portfolio of common equity stocks with an overlay of fully-collateralized written put options on those stocks. Solactive AG (''Calculation Agent'') maintains, calculates, and publishes the value of the Underlying Index on each business day. The Calculation Agent is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Calculation Agent also has implemented and will maintain procedures designed to prevent the use and dissemination of material, nonpublic information regarding the Underlying Index as required under BZX Rule 14.11(c)(5)(A)(iii).

The Exchange states that it has submitted the proposed rule change because the Underlying Index for the Fund does not meet all of the listing requirements of BZX Rule 14.11(c)(5), which applies to Index Fund Shares based on an index that consists of both equity securities and fixed income securities. BZX Rule 14.11(c)(5) requires that the equity and fixed income component securities separately meet the criteria set forth in BZX Rules 14.11(c)(3) and (4), applicable to equity and fixed income securities indexes,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82328 (Dec. 14, 2017), 82 FR 60443 (Dec. 20, 2017).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82559 (Jan. 22, 2018), 83 FR 3820 (Jan. 26, 2018).

[6] In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange: (1) Corrected certain references to its rules; (2) supplemented information regarding requirements applicable to investment advisers, including information with respect to firewalls and procedures designed to prevent the use and dissemination of material, nonpublic information regarding the Fund's portfolio; (3) corrected the definition and usage of certain defined terms; (4) clarified that the Fund will not be a leveraged or inverse-leveraged fund and will not use derivative instruments to enhance leverage; (5) conformed its representations regarding the calculation and dissemination of the Underlying Index (as defined herein) and information relating to trading halts in accordance with applicable BZX rules; (6) supplemented information regarding pricing availability with respect to holdings in non-exchange-listed securities of other investment companies; and (7) made other technical, non-substantive, and conforming changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2017-011/cboebzx2017011-3206088-162013.pdf.*

[7] A more detailed description of the Trust, the Fund, and the Shares, as well as information regarding the methodology of the Underlying Index (as defined herein), the Fund's portfolio holdings, and the Fund's investment restrictions are included in Amendment No. 1 to the proposed rule change and Registration Statement (as defined herein). *See* Amendment No. 1, *supra* note 6; Registration Statement, *infra* note 8 and accompanying text.

[8] *See* Registration Statement on Form N–1A for the Trust, filed on July 31, 2017 (File Nos. 333–138490 and 811–21977). According to the Exchange, the Commission has issued an order granting certain exemptive relief (''Exemptive Order'') with respect to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 27841 (May 25, 2007) (File No. 812–13335).

respectively. Specifically, the Fund does not meet all of the listing requirements of BZX Rule 14.11(c)(5) because the Underlying Index partially consists of put options, in addition to equity and fixed income securities.

*A. Description of the Underlying Index*

The Underlying Index will consist of a mixture of: (1) 100 U.S. exchange-listed, large capitalization common stocks that have listed options traded on a U.S. exchange (''Stock Component''); (2) put options that are sold (''written'') on those same 100 stocks that make up the Stock Component (''Options Strategy''); and (3) Treasury bills (''Collateral''), which are intended to collateralize the Options Strategy. The selection of common stocks for the Stock Component, the selection of strike prices of the fully-collateralized put options for the Options Strategy, and the asset allocation between the Stock Component and Collateral are determined pursuant to the Underlying Index's methodology.[9] According to the Exchange, the Underlying Index is designed to obtain yield from three sources: (1) The dividends and returns on the common stocks in the Stock Component; (2) the premiums received from the put options sold via the Options Strategy; [10] and (3) the yield from Treasury bills serving as Collateral.[11]

The Options Strategy writes or sells put options on the 100 stocks included in the Stock Component. Those put options are standardized options listed and traded on U.S. exchanges and will have terms of at least six but no more than eighteen months as of each quarterly rebalance date. The strike price for each put option will be selected, in accordance with the Underlying Index's methodology, at an amount that will generate a premium that (when annualized) is as close as possible to the expected return of the underlying stock. The put options related to the Options Strategy will have expirations between six and eighteen months. All put options in the Underlying Index are fully collateralized with Treasury bills in an amount equal to the outstanding notional value of the put options. The Collateral may also include the premiums collected on the put options.

The Underlying Index is rebalanced quarterly in March, June, September, and December, typically on the Friday before the third Saturday of the month (''rebalance date''). The 100 common stocks to be included in the Stock Component are made available one week prior to the rebalance date. The put option strike prices and weights of the Underlying Index's components will be made available prior to the end of the business day on the rebalance date.

*B. Description of the Fund*

Under normal market conditions,[12] the Fund will seek to achieve its investment objective by generally investing at least 90% of its total assets in the components of the Underlying Index.[13] The Fund will use an ''indexing'' investment approach to seek to achieve its investment objective. The Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Underlying Index (a correlation of 1.00 would represent perfect correlation).[14] The Fund generally will employ a ''full replication'' methodology, meaning that generally it will seek to invest in all of the components of the Underlying Index (*i.e.,* all of the stocks in the Stock Component, the Options Strategy, and the Collateral for the put options) in proportion to their weightings in the Underlying Index. However, under various circumstances, it may not be possible or practicable for the Fund to purchase all of the components of the Underlying Index in the same weightings as the Underlying Index. In those circumstances, the Fund may purchase a representative sample of securities in the Underlying Index in pursuing its investment objective.[15]

After investing at least 90% of its total assets in components of the Underlying Index, the Fund may invest up to 10% of its total assets in the following: (i) Exchange-traded U.S. equity securities not included in the Underlying Index, but which the Adviser or Sub-Adviser believes will help the Fund to track the Underlying Index; [16] (ii) high quality securities issued or guaranteed by the U.S. government (in addition to Treasury bills) and non-U.S. governments, and each of their agencies and instrumentalities; (iii) money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments (subject to applicable limitations under the 1940 Act, or exemptions therefrom); [17] (iv)

[9] A more detailed description of the methodology of the Underlying Index can be found in Amendment No. 1 to the proposed rule change and Registration Statement. *See supra* note 7.

[10] A put option seller will incur a loss if the put option expires in-the-money at the expiration date or if the in-the-money put option is exercised by the option holder and, in each case, the in-the-money amount is greater than the purchase price of the put option (''premium'') collected by the put option seller. A put option seller will recognize a realized gain if the put option expires ''out of the money'' (*i.e.,* the underlying stock price is below the put option strike price).

[11] The amount of the premiums received from selling options largely involves the level of implied volatility of the underlying reference security: the measurement of how much the market price of the underlying reference security historically varied from day to day over a specific period of time. The higher the implied volatility, the more likely the underlying reference security will experience large price changes. Another factor bearing on the put option premium is the time value of the options. The more time that remains until the expiration date of the option, the greater the amount of time that an option trade has to become profitable due to a favorable move in the underlying reference security. As a result, investors are willing to pay a higher premium for more time until the expiration date of an option (and conversely, as the expiration date of an option approaches, the market price of the option decreases, and down to zero if the option remains out-of-the-money on the expiration date of the option).

[12] The term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[13] The Fund will operate as an index fund and will not be actively managed. Therefore, the Fund will not adopt temporary defensive strategies. It will continue to invest at least 90% of its assets in the components of the Underlying Index, in accordance with the terms of its Exemptive Order, even during unusual market conditions, including extreme volatility or trading halts in the financial markets generally.

[14] Another means of evaluating the relationship between the returns of the Fund and the Underlying Index is to assess the ''tracking error'' between the two. Tracking error means the variation between the Fund's annual return and the return of the Underlying Index, expressed in terms of standard deviation. The Fund seeks to have a tracking error of less than 5%, measured on a monthly basis over a one-year period by taking the standard deviation of the difference in the Fund's returns versus the Underlying Index's returns.

[15] A ''sampling'' methodology means that the Adviser (or Sub-Adviser) will use a quantitative analysis to select component securities of the Underlying Index for the Fund's portfolio that are a representative sample of securities that have, in the aggregate, investment characteristics similar to the Underlying Index in terms of key risk factors, performance attributes and other characteristics. These include industry weightings, market capitalization, return variability, earnings valuation, yield and other financial characteristics of securities. When employing a sampling methodology, the Adviser (or Sub-Adviser) bases the quantity of holdings in the Fund on a number of factors, including asset size of the Fund, and generally expects the Fund to hold less than the total number of securities in the Underlying Index. However, the Adviser (or Sub-Adviser) reserves the right to invest the Fund in as many securities as it believes necessary to achieve the Fund's investment objective.

[16] For example, there may be instances in which the Adviser or Sub-Adviser may choose to purchase or sell securities not in the Underlying Index which the Adviser or Sub-Adviser believes are appropriate to substitute for one or more Underlying Index components in seeking to replicate, before fees and expenses, the performance of the Underlying Index.

[17] The Fund may invest in repurchase agreements with commercial banks, brokers or dealers to

Continued

convertible securities; (v) structured notes;[18] (vi) securities of other investment companies (including affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, and other ETFs) beyond the limits permitted under the 1940 Act, subject to certain terms and conditions set forth in a Commission exemptive order issued to the Trust pursuant to Section 12(d)(1)(J) of the 1940 Act; and (vii) over-the-counter (''OTC'') options.[19]

The Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser or Sub-Adviser.[20] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. The Fund will not be a leveraged or inverse leveraged fund and will not use derivative instruments to enhance leverage.[21]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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.

Under the proposal, the Exchange represents that, under normal market conditions, the Fund will hold a substantial amount (at least 90%) of its net assets in the components of the Underlying Index, which includes: (1) The Stock Component, consisting of 100 U.S. exchange-listed, large capitalization common stocks that have listed options traded on a U.S. exchange; (2) the Options Strategy, consisting of standardized put options listed and traded on U.S. exchanges and that are sold on those same 100 stocks that make up the Stock Component; and (3) Collateral consisting of Treasury bills intended to collateralize the Options Strategy. According to the Exchange, the Shares will be listed and traded on the Exchange pursuant to the listing criteria in BZX Rule 14.11(c)(5) and will therefore comply with all of the requirements therein, except that the Underlying Index will consist, in part, of U.S. exchange listed written put options based on U.S. exchange-listed equity securities.

The Exchange represents that the Stock Component and the Collateral component will satisfy the applicable listing requirements under BZX Rule 14.11(c), including BZX Rules 14.11(c)(3) and (4) relating to equity and fixed income securities index components, respectively. The Commission notes that, with respect to the Options Strategy, all of the standardized put options will be listed and traded on U.S. exchanges, all of which are members of the Intermarket Surveillance Group (''ISG''). In addition, all of the equity securities included in the Stock Component will be listed and traded on U.S. exchanges, all of which are members of ISG. The Commission further notes that, according to the proposal, the Fund will be subject to the other requirements as set forth in Exchange rules applicable to Index Fund Shares, including, but not limited to, requirements relating to the dissemination of key information such as the Net Asset Value, the Intraday Indicative Value, rules governing the trading of equity and fixed income securities, firewalls, trading hours, and trading halts.

Under the proposal, the value of the Underlying Index will be calculated and widely disseminated at least once every 15 seconds during Regular Trading Hours[24] and will be available from major market data vendors, provided however, that with respect to the fixed income components of the Underlying Index, the impact on the Underlying Index will be updated and widely disseminated at least once daily.[25] Further, an Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Exchange's Regular Trading Hours. The Fund's portfolio holdings will be disclosed on the Fund's website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.[26]

Quotation and last-sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. Intraday, closing, and settlement prices of common stocks and other exchange-listed instruments will be readily available from the exchanges trading such securities as well as automated quotation systems, published or other public sources, or online information services such as Bloomberg

generate income from its excess cash balances and to invest securities lending cash collateral.

[18] Structured notes are derivative securities for which the amount of principal repayment or interest payments is based on the movement of one or more factors, including but not limited to, currency exchange rates, interest rates (such as the prime lending rate or LIBOR), referenced bonds, and stock indices.

[19] The Fund may use OTC options, together with positions in cash and money market instruments, to simulate full investment in the Underlying Index. The Fund will only enter into OTC options with counterparties that the Adviser or Sub-Adviser reasonably believes are capable of performing under the contract, and the Fund will post collateral as required by the counterparty and applicable regulations. The Adviser or Sub-Adviser will attempt to mitigate the Fund's respective credit risk by transacting, where possible, with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty. The Adviser and Sub-Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser and Sub-Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's or Sub-Adviser's past experience with the counterparty, and the price and market actions of debt of the counterparty. The Fund may also use various techniques to minimize credit risk, including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. However, the risk of losses to the Fund resulting from counterparty default is still possible.

[20] In reaching liquidity decisions, the Adviser or Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[21] The Exchange states that the Fund's investments will be consistent with the Fund's investment objective. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a ''leveraged ETF'' or ''inverse leveraged ETF,'' *i.e.,* it will not be operated in a manner designed to seek a multiple or an inverse multiple of the performance of an underlying reference index.

[22] 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).

[23] 15 U.S.C. 78f(b)(5).

[24] The Exchange's ''Regular Trading Hours'' are between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

[25] *See* BZX Rule 14.11(c)(5)(A)(ii).

[26] *See* BZX Rule 14.11(c)(1)(B)(iv).

or Reuters. Quotation information from brokers and dealers or pricing services will be available for U.S. government obligations, high quality securities issued or guaranteed by the U.S. government (in addition to Treasury bills) and non-U.S. governments, and each of their agencies and instrumentalities, money market instruments, convertible securities, structured notes, non-exchange-listed securities of other investment companies, and OTC options.

The Commission also believes that the proposal is designed to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. Similarly, trading in the Shares will be halted if an interruption to the dissemination of either of the Intraday Indicative Value or the value of the Underlying Index persists past the trading day in which it occurred. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and made available to all market participants at the same time.[27] If the Exchange becomes aware that the NAV for the Shares is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange will halt trading in the Shares.[28]

The Exchange has represented that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange has also represented that it may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund via the ISG from other exchanges that are members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Exchange has represented that all statements and representations made in this filing regarding the Underlying Index composition; the description of the portfolio or reference assets; limitations on portfolio holdings or reference assets; dissemination and availability of the Underlying Index, reference asset, and intraday indicative values; and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Shares.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12. This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act[29] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–CboeBZX–2017–011), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05562 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

[27] *See* BZX Rule 14.11(c)(9)(A)(ii).

[28] *See* BZX Rule 14.11(c)(1)(b)(iv).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33047; File No. 812–14848]**

## Triloma EIG Energy Income Fund, et al.

March 14, 2018.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

*Summary of Application:* Applicants request an order to permit certain business development companies (''BDC'') and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

*Applicants:* Triloma EIG Energy Income Fund (the ''Perpetual Fund''), Triloma EIG Energy Income Fund—Term I (the ''Term Fund'' and, together with the Perpetual Fund, the ''Existing Regulated Entities''); Triloma Energy Advisors, LLC (''Triloma''); EIG Credit Management Company, LLC (''EIG''); EIG Asset Management, LLC, EIG Funds Management, LLC, EIG Management Company, LLC, EIG Global Energy (Asia) Limited, EIG Harbour Energy Advisor, L.P. (collectively, together with EIG, the ''Existing EIG Advisors''); EIG-Gateway Direct Investments, L.P., EIG Energy Fund XVI, L.P., EIG Energy Fund XVI–B, L.P., EIG Energy Fund XVI–E, L.P., EIG Energy Fund XVI (Cayman), L.P., EIG Energy Fund XVI (Scotland), L.P., EIG-Keats Energy Partners, L.P., NYCRS EIG Energy Partners, L.P., EIG Sunsuper Co-Investment, L.P., EIG Global Private Debt Fund-A, L.P., EIG Global Private Debt Fund-A (UL), L.P., EIG Global Private Debt Sub B (UL), L.P., EIG Energy Fund XVII, L.P., EIG Energy Fund XVII–B, L.P., EIG Energy Fund XVII (Scotland), L.P., EIG Energy Fund XVII (Cayman), L.P., EIG-Emerson Energy Partners, L.P., and Harbour Energy Ltd. (collectively, the ''Existing Affiliated Investors'').

*Filing Dates:* The application was filed on November 30, 2017, and amended on February 15, 2018.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: Triloma and the Existing

Regulated Entities: 201 N. New York Avenue, Suite 200, Winter Park, FL 32789; the Existing EIG Advisors and the Existing Affiliated Investors: 1700 Pennsylvania Ave. NW, Suite 800, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Hae-Sung Lee, Attorney-Adviser, at (202) 551–7345 or Robert H. Shapiro, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

*Applicants' Representations:*

1. Term Fund was organized under the Delaware Statutory Trust Act for the purpose of operating as an externally-managed, non-diversified, closed-end management investment company. Term Fund is a registered investment company under the Act. Term Fund's Objectives and Strategies [1] are to provide shareholders with current income; as secondary investment objective, the Term Fund will seek to provide capital preservation and, to a lesser extent, long-term capital appreciation by investing primarily in a global portfolio of privately originated energy company and project debt. Term Fund has a five member Board,[2] of which three members are Independent Trustees,[3] one member is considered an ''interested person'' of Triloma, within the meaning of section 2(a)(19) of the Act, and one member is considered an ''interested person'' of EIG.

2. Perpetual Fund was organized under the Delaware Statutory Trust Act for the purpose of operating as an externally-managed, non-diversified, closed-end management investment company. Perpetual Fund is a registered investment company under the Act. Perpetual Fund has the same Objectives and Strategies as Term Fund. Perpetual Fund will be governed by a Board comprised of the same trustees (including Independent Trustees) that serve as the Board of Term Fund.

3. Triloma is a Florida limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). Triloma serves as the investment adviser to the Existing Regulated Entities. Triloma also provides administrative services to the Existing Regulated Entities under an administrative services agreement.

4. EIG is a Delaware limited liability company and is registered as an investment adviser under the Advisers Act. EIG serves as the sub-adviser to the Existing Regulated Entities. EIG is an indirectly owned subsidiary of EIG Global Energy Partners, LLC (''EIG Partners'').

5. Each Existing Affiliated Investors is a privately-offered fund that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. An Existing EIG Advisor serves as the investment adviser to each Existing Affiliated Investor. Each Existing EIG Advisor is either, directly or indirectly, controlled by EIG Partners or under common control with EIG and is registered as an investment adviser under the Advisers Act.

6. Applicants seek to supersede the Prior Order [4] to permit one or more Regulated Entities [5] and/or one or more Affiliated Investors [6] to participate in the same investment opportunities through a proposed co-investment program (the ''Co-Investment Program'') where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act. For purposes of the application, ''Co-Investment Transaction'' means any transaction in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Investors and/or one or more other Regulated Entities without obtaining and relying on the Order.[7] The term ''Advisor'' means any Triloma Advisor or any EIG Advisor.

7. Applicants state that a Regulated Entity may, from time to time, form a Wholly-Owned Investment Subsidiary.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Investor because it would be a company controlled by its parent Regulated Entity for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated

[1] ''Objectives and Strategies'' means a Regulated Entity's (as defined below) investment objectives and strategies, as described in the Regulated Entity's registration statement on Form N–2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Entity's reports to shareholders.

[2] The term ''Board'' refers to the board of directors or trustees of any Regulated Entity.

[3] The term ''Independent Trustees'' refers to the trustees or directors of any Regulated Entity that are not ''interested persons'' of the Regulated Entity within the meaning of section 2(a)(19) of the Act.

[4] The requested order (the ''Order'') would supersede an exemptive order issued by the Commission on May 31, 2016 (the ''Prior Order'') that was granted pursuant to Sections 57(a)(4) and 57(i) and Rule 17d–1, with the result that no person will continue to rely on the Prior Order if the Order is granted. *Triloma EIG Global Energy Fund, et al.,* Investment Company Act Release Nos. 32106 (May 5, 2016) (notice) and 32132 (May 31, 2016) (order).

[5] ''Regulated Entity'' means any of the Existing Regulated Entities and any Future Regulated Entity. ''Future Regulated Entity'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC under the Act, and either (b) whose investment adviser is a Triloma Advisor and whose investment sub-adviser is an EIG Advisor or (c) whose investment adviser is an EIG Advisor. ''Triloma Advisor'' means Triloma or any future investment adviser that (i) controls, is controlled by or is under common control with Triloma, (ii) is registered as an investment adviser under the Advisers Act and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity. ''EIG Advisor'' means any Existing EIG Advisor or any future investment adviser that (i) controls, is controlled by or is under common control with EIG, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity.

[6] ''Affiliated Investors'' means the Existing Affiliated Investors and any Future Affiliated Investor. ''Future Affiliated Investor'' means an entity (a) whose investment adviser is an EIG Advisor and (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term ''Wholly-Owned Investment Subsidiary'' means an entity (i) that is wholly-owned by a Regulated Entity (with such Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Entity (and, in the case of an entity that is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, as amended (the ''SBA Act''), as a small business investment company (an ''SBIC''), to maintain a license under the SBA Act and issue debentures guaranteed by the Small Business Administration); (iii) with respect to which the Regulated Entity's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries participating in the Co-Investment Program will be Wholly-Owned Investment Subsidiaries and will have Objectives and Strategies that are either substantially the same as, or a subset of, their parent Regulated Entity's Objectives and Strategies. A subsidiary that is an SBIC may be a Wholly-Owned Investment Subsidiary if it satisfies the conditions in this definition.

Entity were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Entity's investments and, therefore, no conflicts of interest could arise between the Regulated Entity and the Wholly-Owned Investment Subsidiary. The Regulated Entity's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Regulated Entity's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Entity's place. If the Regulated Entity proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Entity and the Wholly-Owned Investment Subsidiary.

8. It is anticipated that an EIG Advisor will periodically determine that certain investments the EIG Advisor recommends for a Regulated Entity would also be appropriate investments for one or more other Regulated Entities and/or one or more Affiliated Investors. Such a determination may result in the Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors co-investing in certain investment opportunities. For each such investment opportunity, the Advisors to each Regulated Entity will independently analyze and evaluate the investment opportunity as to its appropriateness for such Regulated Entity taking into consideration the Regulated Entity's Objectives and Strategies.

9. Applicants state that Triloma serves as the Existing Regulated Entities' investment adviser and administrator and EIG serves as the Existing Regulated Entities' sub-adviser, and with respect to any Future Regulated Entity, either (i) Triloma or another Triloma Advisor and EIG or another EIG Advisor will serve in the same capacities as with Existing Regulated Entities, or (ii) EIG or another EIG Advisor will serve as investment adviser. Applicants represent that although an EIG Advisor will identify and recommend investments [9] for each Regulated Entity for which Triloma or another Triloma Advisor serves as investment advisor, prior to any investment by such Regulated Entity, the EIG Advisor will present each proposed investment to the Triloma Advisor which has the authority to approve or reject all investments proposed for the Regulated Entity by the EIG Advisor. With respect to any Future Regulated Entity for which EIG or another EIG Advisor serves as investment adviser, rather than sub-adviser, EIG or such other EIG Advisor will be responsible for the overall management of the Future Regulated Entity's activities, and for the day-to-day management of the Future Regulated Entity's investment portfolio, in each case consistent with its fiduciary duties and pursuant to the terms of an Advisory Agreement with the Future Regulated Entity.

10. Applicants state that each EIG Advisor has (or will have, in the case of future advisers) an investment committee through which it will carry out its obligation under condition 1 to make a determination as to the appropriateness of a Potential Co-Investment Transaction for each Regulated Entity. Applicants represent that each EIG Advisor, as a registered investment adviser, has (or will have, in the case of future advisers) developed a robust allocation process that is designed to allocate investment opportunities fairly and equitably among its clients over time. Applicants state that, in the case of a Potential Co-Investment Transaction, the applicable EIG Advisor would apply its allocation policies and procedures in determining the proposed allocation for the Regulated Entity consistent with the requirements of condition 2(a).

11. Applicants state that, once the applicable EIG Advisor determined a proposed allocation for a Regulated Entity for which Triloma or another Triloma Advisor serves as investment adviser, such EIG Advisor would notify the applicable Triloma Advisor of the Potential Co-Investment Transaction and the EIG Advisor's recommended allocation for such Regulated Entity. Applicants further state that the applicable Triloma Advisor would then present the Potential Co-Investment Transaction and the EIG Advisor's proposed allocation to the Triloma Advisor's investment committee for its approval. Applicants represent that the Triloma Advisor's investment committee would review the EIG Advisor's recommendation for the Regulated Entity and would have the ability to ask questions of the EIG Advisor and request additional information from the EIG Advisor. Applicants further submit that if the Triloma Advisor's investment committee approved the investment for the Regulated Entity, the investment and all relevant allocation information would then be presented to the Regulated Entity's Board for its approval in accordance with the conditions to the application. Applicants state that they believe the investment process between the EIG Advisors and the Triloma Advisors, prior to seeking approval from the Regulated Entity's Board (which is in addition to, rather than in lieu of, the procedures required under the conditions of the application), is significant and provides for additional procedures and processes to ensure that the Regulated Entity is being treated fairly in respect of Potential Co-Investment Transactions.

12. If the Advisors to a Regulated Entity determine that a Potential Co-Investment Opportunity is appropriate for the Regulated Entity (and the applicable Triloma Advisor approves the investment for such Regulated Entity), and one or more other Regulated Entities and/or one or more Affiliated Investors may also participate, the Advisors will present the investment opportunity to the Eligible Trustees [10] of the Regulated Entity prior to the actual investment by the Regulated Entity. As to any Regulated Entity, a Co-Investment Transaction will be consummated only upon approval by a required majority of the Eligible Trustees of such Regulated Entity within the meaning of section 57(o) of the Act (''Required Majority'').[11]

13. With respect to the pro rata dispositions and follow-on Investments provided in conditions 7 and 8, a Regulated Entity may participate in a pro rata disposition or follow-on Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Entity and Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or follow-on investment, as the case may be; and (ii) each Regulated Entity's Board has approved that Regulated Entity's participation in pro rata

[9] Applicants represent that the Triloma Advisors will not source any Potential Co-Investment Transactions under the requested Order.

[10] ''Eligible Trustees'' means the trustees or directors of a Regulated Entity that are eligible to vote under section 57(o) of the Act.

[11] In the case of a Regulated Entity that is a registered closed-end fund, the trustees or directors that make up the Required Majority will be determined as if the Regulated Entity were a BDC subject to section 57(o). As defined in section 57(o), ''required majority'' means ''both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.''

dispositions and follow-on investments as being in the best interests of the Regulated Entity. If the Board does not so approve, any such disposition or follow-on investment will be submitted to the Regulated Entity's Eligible Trustees. The Board of any Regulated Entity may at any time rescind, suspend or qualify its approval of pro rata dispositions and follow-on investments with the result that all dispositions and/or follow-on investments must be submitted to the Eligible Trustees.

14. No Independent Trustee of a Regulated Entity will have a financial interest in any Co-Investment Transaction.

15. Under condition 15, if an Advisor or its principals, or any person controlling, controlled by, or under common control with the Advisor or its the principals, and any Affiliated Investors (collectively, the ''Holders'') own in the aggregate more than 25% of the outstanding voting securities of a Regulated Entity (''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the condition. Applicants believe that this condition will ensure that the Independent Trustees will act independently in evaluating the Co-Investment Program, because the ability of the Advisor or its principals to influence the Independent Trustees by a suggestion, explicit or implied, that the Independent Trustees can be removed will be limited significantly. Applicants represent that the Independent Trustees shall evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

*Applicants' Legal Analysis:*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Entities that are registered closed-end investment companies. Similarly, with regard to BDCs, section 57(a)(4) of the Act makes it unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC (or a company controlled by such BDC) is a joint or a joint and several participant with that person in contravention of rules as prescribed by the Commission. Because the Commission has not adopted any rules expressly under section 57(a)(4), section 57(i) provides that the rules under section 17(d) applicable to registered closed-end investment companies (*e.g.,* rule 17d–1) are, in the interim, deemed to apply to transactions subject to section 57(a). Rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), as modified by rule 57b–1, from acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC (or a company controlled by such BDC) is a participant, unless an application regarding the joint enterprise, arrangement, or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of the plan or any modification thereof, to security holders for approval, or prior to its adoption or modification if not so submitted.

2. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants submit that Each Regulated Entity may be deemed to be an ''affiliated person'' of each other Regulated Entity within the meaning of section 2(a)(3) of the Act. Applicants state that the Regulated Entities, by virtue of each having either a Triloma Advisor as investment adviser and an EIG Advisor as sub-adviser, or an EIG Advisor as an investment adviser, may be deemed to be under common control, and thus affiliated persons of each other under section 2(a)(3)(C) of the Act. Section 17(d) and section 57(b) apply to any investment adviser to a closed-end fund or a BDC, respectively, including the sub-adviser. Thus, an EIG Advisor and any Regulated Entities or Affiliated Investors that it advises could be deemed to be persons related to other Regulated Entities it advises or sub-advises in a manner described by sections 17(d) and 57(b) and therefore prohibited by sections 17(d) and 57(a)(4) and rule 17d–1 from participating in the Co-Investment Program. Applicants further submit that, because the EIG Advisors are ''affiliated persons'' of other EIG Advisors, Regulated Entities, and Affiliated Investors advised by any of them could be deemed to be persons related to other Regulated Entities (or a company controlled by a Regulated Entity) advised or sub-advised by any of them in a manner described by sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

4. Applicants state that they expect that that co-investment in portfolio companies by a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors will increase favorable investment opportunities for each Regulated Entity.

5. Applicants submit that the fact that the Required Majority will approve each Co-Investment Transaction before investment (except for certain dispositions or follow-on investments, as described in the conditions), and other protective conditions set forth in the application, will ensure that each Regulated Entity will be treated fairly. Applicants state that each Regulated Entity's participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants. Applicants further state that the terms and conditions proposed herein will ensure that all such transactions are reasonable and fair to each Regulated Entity and the Affiliated Investors and do not involve overreaching by any person concerned, including Triloma or EIG.

*Applicants' Conditions:*

Applicants agree that the Order will be subject to the following conditions:

1. Each time an EIG Advisor considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity's then-current Objectives and Strategies, the Advisors to the Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. a. If the Advisors to a Regulated Entity deem participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Advisors will then determine an appropriate level of investment for such Regulated Entity.

b. If the aggregate amount recommended by the Advisors to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction,

exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, pro rata based on each participant's Available Capital [12] for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Advisors to each participating Regulated Entity will provide the Eligible Trustees of each participating Regulated Entity with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Entity's investments for compliance with these allocation procedures.

c. After making the determinations required in conditions 1 and 2(a) above, the Advisors to the Regulated Entity will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Trustees of each participating Regulated Entity for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities' and the Affiliated Investors' participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(a) The interests of the Regulated Entity's shareholders; and

(b) the Regulated Entity's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; provided, that if another Regulated Entity or Affiliated Investor, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer, or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit a Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(a) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; and

(b) the Advisors to the Regulated Entity agree to, and do, provide periodic reports to the Regulated Entity's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(c) any fees or other compensation that any other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or an Affiliated Investor receives in connection with the right of one or more Regulated Entities or Affiliated Investors to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Investors (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Entity in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Advisors, any other Regulated Entity or the Affiliated Investors or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted under sections 17(e) and 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(c), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. Each Regulated Entity will have the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Advisors will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for follow-on investments made in accordance with condition 8,[13] a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity or an Affiliated Investor or any affiliated person of another Regulated Entity or an Affiliated Investor is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Entity and Affiliated Investor. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(a), (b) and (c) are met.

7. a. If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the Advisors will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Entity in the disposition.

b. Each Regulated Entity will have the right to participate in such disposition

[12] "Available Capital" means (a) for each Regulated Entity, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Entity or imposed by applicable laws, rules, regulations or interpretations and (b) for each Affiliated Investor, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set by the Affiliated Investor's directors, general partners or adviser or imposed by applicable laws, rules, regulations or interpretations.

[13] This exception applies only to follow-on investments by a Regulated Entity in issuers in which that Regulated Entity already holds investments.

on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity.

c. A Regulated Entity may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Regulated Entity's Board has approved as being in the best interests of the Regulated Entity the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Regulated Entity's Board is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Advisors will provide their written recommendation as to the Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

d. Each Regulated Entity and each Affiliated Investor will bear its own expenses in connection with the disposition.

8. a. If any Regulated Entity or Affiliated Investor desires to make a ''follow-on investment'' (*i.e.,* an additional investment in the same entity, including through the exercise of warrants or other rights to purchase securities of the issuer) in a portfolio company whose securities were acquired by the Regulated Entity and the Affiliated Investor in a Co-Investment Transaction, the Advisors will:

(i) Notify each Regulated Entity of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed follow-on investment, by each Regulated Entity.

b. A Regulated Entity may participate in such follow-on investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer immediately preceding the follow-on investment; and (ii) the Regulated Entity's Board has approved as being in the best interests of such Regulated Entity the ability to participate in follow-on investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Advisors will provide their written recommendation as to such Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such follow-on investment solely to the extent that the Required Majority determines that it is in such Regulated Entity's best interests.

c. If, with respect to any follow-on investment:

(i) The amount of a follow-on investment is not based on the Regulated Entities' and the Affiliated Investors' outstanding investments immediately preceding the follow-on investment; and

(ii) the aggregate amount recommended by the Advisors to be invested by the Regulated Entity in the follow-on investment, together with the amount proposed to be invested by the other participating Regulated Entities and the Affiliated Investors in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

d. The acquisition of follow-on investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and be subject to the other conditions set forth in the application.

9. The Independent Trustees of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that a Regulated Entity considered but declined to participate in, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Trustees will consider at least annually the continued appropriateness for such Regulated Entity of participating in new and existing Co-Investment Transactions.

10. Each Regulated Entity will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Entities were a BDC and each of the investments permitted under these conditions were approved by a Required Majority under section 57(f).

11. No Independent Trustee of a Regulated Entity will also be a trustee, director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of any Affiliated Investor.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) shall, to the extent not payable by the Advisors under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding brokerage or underwriting compensation contemplated by section 17(e) or 57(k) of the Act, as applicable) [14] received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Advisor pending consummation of the transaction, the fee will be deposited into an account maintained by the Advisor at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the Advisors nor any affiliated person of the Regulated Entities or the Affiliated Investors will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and the Affiliated Investors, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(c), (b) brokerage or underwriting compensation permitted by section 17(e) or 57(k) of the Act, as applicable, or (c) in the case of the Advisors, investment advisory fees paid in accordance with the Regulated

[14] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

Entities' and the Affiliated Investors' investment advisory agreements).

14. The Advisors to the Regulated Entities and Affiliated Investors will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisors to each Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within a Regulated Entity's then-current Objectives and Strategies and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

15. If the Holders own in the aggregate more than 25 percent of the shares of a Regulated Entity, then the Holders will vote such shares as directed by an independent third party when voting on (1) the election of directors or trustees; (2) the removal of one or more directors or trustees; or (3) any matters requiring approval by the vote of a majority of the outstanding voting securities, as defined in section 2(a)(42) of the Act.

16. Each Regulated Entity's chief compliance officer, as defined in Rule 38a–1(a)(4), will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Entity's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05551 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33049; File No. 812–14789]**

## Destra Exchange-Traded Fund Trust, et al.

March 14, 2018

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creations Units in-kind in a master-feeder structure; and (g) the Funds to issue Shares in less than Creation Unit size to investors participating in, to the extent applicable, a distribution reinvestment program.

**APPLICANTS:** Destra Exchange-Traded Fund Trust (the ''Trust''), a Massachusetts business trust that intends to register under the Act as an open-end management investment company with multiple series, Destra Capital Advisors LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Destra Capital Investments LLC (the ''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

**FILING DATES:** The application was filed on June 27, 2017 and amended on December 21, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: c/o Jane Hong Shissler, Destra Capital Investments LLC, One North Wacker Drive, 48th Floor, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** Asen Parachkevov, Senior Counsel, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets

[1] Applicants request that the order apply to the initial Fund, as well as to future series of the Trust and any future open-end management investment companies or series thereof (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity or any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only (other than pursuant to a dividend reinvestment program).

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05569 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82871; File No. SR–NASDAQ–2017–088]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Participants To Designate When an Order With a RTFY or SCAN Routing Order Attribute Will be Activated During Pre-Market Hours

March 14, 2018.

On August 30, 2017, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Nasdaq Rule 4703(a) to allow participants to designate when an order with a RTFY or SCAN routing order attribute will be activated during Pre-Market Hours. The proposed rule change was published for comment in the **Federal Register** on September 18, 2017.[3] On October 31, 2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On December 13, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[6] On December 15, 2017, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on September 18, 2017. March 17, 2018 is 180 days from that date, and May 16, 2018 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates May 16, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2017–088), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05561 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81579 (September 12, 2017), 82 FR 43584.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 81986, 82 FR 51453 (November 6, 2017). The Commission designated December 17, 2017 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2017-088/nasdaq2017088-2798107-161689.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 82335, 82 FR 60637 (December 21, 2017).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82876; File No. SR–FICC–2018–001]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change to the Required Fund Deposit Calculation in the Government Securities Division Rulebook

March 14, 2018.

### I. Introduction

On January 12, 2018, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2018–001 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to make changes to the method by which the Government Securities Division (''GSD'') of FICC calculates the margin requirement of its members.[3] The Proposed Rule Change was published for comment in the **Federal Register** on February 1, 2018.[4] As of March 14, 2018, the Commission has received two comment letters to the Proposed Rule Change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the Proposed Rule Change.

### II. Description of the Proposed Rule Change

FICC proposes to amend the FICC GSD Rulebook (''GSD Rules'') [7] to make changes to GSD's method of calculating GSD members' (''Members'') margin.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 12, 2018, FICC also filed the proposal contained in the Proposed Rule Change as advance notice SR–FICC–2018–801 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''), 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on March 2, 2018. Securities Exchange Act Release No. 82779 (February 26, 2018), 83 FR 9055 (March 2, 2018) (SR–FICC–2018–801). On March 7, 2018, the Commission extended its review period of the Advance Notice for an additional 60 days pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act. Securities Exchange Act Release No. 82820 (March 7, 2018), 83 FR 10761 (March 12, 2018) (SR–FICC–2018–801). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Securities Exchange Act Release No. 82588 (January 26, 2018), 83 FR 4687 (February 1, 2018) (SR–FICC–2018–001) (''Notice'').

[5] Letter from Robert E. Pooler, Chief Financial Officer, Ronin Capital LLC, dated February 22, 2018, to Robert W. Errett, Deputy Secretary, Commission, *available at https://www.sec.gov/comments/sr-ficc-2018-001/ficc2018001-3133039-161947.pdf* (''Ronin Letter''); letter from Michael Santangelo, Chief Financial Officer, Amherst Pierpont Securities LLC, dated February 22, 2018, to Brent J. Fields, Secretary, Commission, *available at https://www.sec.gov/comments/sr-ficc-2018-001/ficc2018001-3130095-161938.pdf* (''Amherst Pierpont Letter''). Because the proposal contained in the Proposed Rule Change was also filed as an Advance Notice, *supra* note 3, the Commission is considering all public comments received on the proposal regardless of whether the comments were submitted to the Advance Notice or the Proposed Rule Change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *Available at http://www.dtcc.com/legal/rules-and-procedures.*

[8] *See* Notice, *supra* note 4, at 4687.

Specifically, FICC proposes to (1) change GSD's method of calculating the Value-at-Risk (''VaR'') Charge component; (2) add a new component referred to as the ''Blackout Period Exposure Adjustment;'' (3) eliminate the Blackout Period Exposure Charge and the Coverage Charge components; (4) amend the Backtesting Charge component to (i) include the backtesting deficiencies of certain GCF Counterparties during the Blackout Period, and (ii) give GSD the ability to assess the Backtesting Charge on an intraday basis for all Netting Members; and (5) amend the calculation for determining the Excess Capital Premium for Broker Members, Inter-Dealer Broker Members, and Dealer Members.[9] In addition, FICC proposes to provide transparency with respect to GSD's existing authority to calculate and assess Intraday Supplemental Fund Deposit amounts.[10] The proposed QRM Methodology document would reflect the proposed VaR Charge calculation and the proposed Blackout Period Exposure Adjustment calculation.[11]

*A. Changes to GSD's VaR Charge Component*

FICC states that the changes proposed in the Proposed Rule Change are designed to improve GSD's current VaR Charge so that it responds more effectively to market volatility.[12] Specifically, FICC proposes to (1) replace GSD's current full revaluation approach with a sensitivity approach; [13] (2) employ the Margin Proxy as an alternative (*i.e.,* a back-up) VaR Charge calculation; (3) eliminate GSD's current augmented volatility adjustment multiplier; (4) utilize a haircut method for securities cleared by GSD that lack sufficient historical data; and (5) establish a VaR Floor calculation that would serve as a minimum VaR Charge for Members, as discussed below.[14]

For the proposed sensitivity approach to the VaR Charge, FICC would source sensitivity data and relevant historical risk factor time series data generated by an external vendor based on its econometric, risk and pricing models.[15] FICC would conduct independent data checks to verify the accuracy and consistency of the data feed received from the vendor.[16] In the event that the external vendor is unable to provide the sourced data in a timely manner, FICC would employ its existing Margin Proxy as a back-up VaR Charge calculation.[17]

Additionally, FICC proposes to look at the historical changes of specific risk factors during the look-back period in order to generate risk scenarios to arrive at the market value changes for a given portfolio.[18] A statistical probability distribution would be formed from the portfolio's market value changes, which would then be calibrated to cover the projected liquidation losses at a 99 percent confidence level.[19] The portfolio risk sensitivities and the historical risk factor time series data would then be used by FICC's risk model to calculate the VaR Charge for each Member.[20]

FICC also proposes to eliminate the augmented volatility adjustment multiplier. FICC states that the multiplier would not be necessary because the proposed sensitivity approach would have a longer look-back period and the ability to include an additional stressed market condition to account for periods of market volatility.[21]

According to FICC, in the event that a portfolio contains classes of securities that do not have sufficient volume and price information available, a historical simulation approach would not generate VaR Charge amounts that reflect the risk profile of such securities.[22] Therefore, FICC proposes to calculate the VaR Charge for these securities by utilizing a haircut approach based on a market benchmark with a similar risk profile as the related security.[23] The proposed haircut approach would be calculated separately for U.S. Treasury/Agency securities and mortgage-backed securities.[24]

Finally, FICC proposes to amend the existing calculation of the VaR Charge to include a VaR Floor, which would be the amount used as the VaR Charge when the sum of the amounts calculated by the proposed sensitivity approach and haircut method is less than the proposed VaR Floor.[25] The VaR Floor would be calculated as the sum of (1) a U.S. Treasury/Agency bond

[9] *See* Notice, *supra* note 4, at 4687–88.

[10] *See* Notice, *supra* note 4, at 4688. Pursuant to the GSD Rules, FICC has the existing authority and discretion to calculate an additional amount on an intraday basis in the form of an Intraday Supplemental Clearing Fund Deposit. *See* GSD Rules 1 and 4, *supra* note 7.

[11] *See* Notice, *supra* note 4, at 4688.

[12] *See* Notice, *supra* note 4, at 4690. FICC proposes to amend its calculation of GSD's VaR Charge because during the fourth quarter of 2016, FICC's current methodology for calculating the VaR Charge did not respond effectively to the market volatility that existed at that time. As a result, the VaR Charge did not achieve backtesting coverage at a 99 percent confidence level and, therefore, yielded backtesting deficiencies beyond FICC's risk tolerance.

[13] *Id.* GSD's proposed sensitivity approach is similar to the sensitivity approach that FICC's Mortgage-Backed Securities Division (''MBSD'') uses to calculate the VaR Charge for MBSD clearing members. *See* Securities Exchange Act Release No. 79868 (January 24, 2017), 82 FR 8780 (January 30, 2017) (SR–FICC–2016–007) and Securities Exchange Act Release No. 79643 (December 21, 2016), 81 FR 95669 (December 28, 2016) (SR–FICC–2016–801).

[14] *Id.*

[15] *See* Notice, *supra* note 4, at 4690. The following risk factors would be incorporated into GSD's proposed sensitivity approach: Key rate, convexity, implied inflation rate, agency spread, mortgage-backed securities spread, volatility, mortgage basis, and time risk factor. These risk factors are defined as follows:

- Key rate measures the sensitivity of a price change to changes in interest rates;
- convexity measures the degree of curvature in the price/yield relationship of key interest rates;
- implied inflation rate measures the difference between the yield on an ordinary bond and the yield on an inflation-indexed bond with the same maturity;
- agency spread is yield spread that is added to a benchmark yield curve to discount an Agency bond's cash flows to match its market price;
- mortgage-backed securities spread is the yield spread that is added to a benchmark yield curve to discount a to-be-announced (''TBA'') security's cash flows to match its market price;
- volatility reflects the implied volatility observed from the swaption market to estimate fluctuations in interest rates;
- mortgage basis captures the basis risk between the prevailing mortgage rate and a blended Treasury rate; and
- time risk factor accounts for the time value change (or carry adjustment) over the assumed liquidation period. *Id.*

The above-referenced risk factors are similar to the risk factors currently utilized in MBSD's sensitivity approach; however, GSD has included other risk factors that are specific to the U.S. Treasury securities, Agency securities and mortgage-backed securities cleared through GSD. *Id.* Concerning U.S. Treasury securities and Agency securities, FICC would select the following risk factors: Key rates, convexity, agency spread, implied inflation rates, volatility, and time. *Id.* For mortgage-backed securities, each security would be mapped to a corresponding TBA forward contract and FICC would use the risk exposure analytics for the TBA as an estimate for the mortgage-backed security's risk exposure analytics. *Id.* FICC would use the following risk factors to model a TBA security: Key rates, convexity, mortgage-backed securities spread, volatility, mortgage basis, and time. *Id.* To account for differences between mortgage-backed securities and their corresponding TBA, FICC would apply an additional basis risk adjustment.

[16] *Id.*

[17] *See* Notice, *supra* note 4, at 4692. In the event that the data used for the sensitivity approach is unavailable for a period of more than five days, FICC proposes to revert back to the Margin Proxy as an alternative VaR Charge calculation. *Id.*

[18] *See* Notice, *supra* note 4, at 4690.

[19] *Id.*

[20] *Id.*

[21] *See* Notice, *supra* note 4, at 4692.

[22] *Id.*

[23] *See* Notice, *supra* note 4, at 4692–93.

[24] *See* Notice, *supra* note 4, at 4693.

[25] *Id.*

marginfloor[26] and (2) a mortgage-backed securities margin floor.[27]

*B. Addition of the Blackout Period Exposure Adjustment Component*

FICC proposes to add a new component to GSD's margin calculation—the Blackout Period Exposure Adjustment.[28] FICC states that the Blackout Period Exposure Adjustment would be calculated to address risks that could result from overstated values of mortgage-backed securities that are pledged as collateral for GCF Repo Transactions[29] during a Blackout Period.[30] A Blackout Period is the period between the last business day of the prior month and the date during the current month upon which a government-sponsored entity that issues mortgage-backed securities publishes its updated Pool Factors.[31] The proposed Blackout Period Exposure Adjustment would result in a charge that either increases a Member's VaR Charge or a credit that decreases the VaR Charge.[32]

*C. Elimination of the Blackout Period Exposure Charge and Coverage Charge Components*

FICC proposes to eliminate the existing Blackout Period Exposure Charge component from GSD's margin calculation.[33] The Blackout Period Exposure Charge only applies to Members with GCF Repo Transactions that have two or more backtesting deficiencies during the Blackout Period and whose overall 12-month trailing backtesting coverage falls below the 99 percent coverage target.[34] FICC would eliminate this charge because the proposed Blackout Period Exposure Adjustment would apply to all Members with GCF Repo Transactions collateralized with mortgage-backed securities during the Blackout Period.[35]

FICC also proposes to eliminate the existing Coverage Charge component from GSD's margin calculation.[36] FICC states that the Coverage Charge is based on historical portfolio activity, which may not be indicative of a Member's current risk profile.[37] FICC would eliminate the Coverage Charge because, as FICC states, the proposed sensitivity approach would provide overall better margin coverage, rendering the Coverage Charge unnecessary.[38]

*D. Amendment of the Backtesting Charge Component*

FICC proposes to amend GSD's existing Backtesting Charge component of its margin calculation to (1) include the backtesting deficiencies of certain Members during the Blackout Period and (2) give GSD the ability to assess the Backtesting Charge on an intraday basis.[39]

Currently, the Backtesting Charge does not apply to Members with mortgage-backed securities during the Blackout Period because such Members would be subject to a Blackout Period Exposure Charge.[40] In response to FICC's proposal to eliminate the Blackout Period Exposure Charge, FICC proposes to amend the applicability of the Backtesting Charge.[41] Specifically, FICC proposes to apply the Backtesting Charge to Members that experience backtesting deficiencies that are attributed to the Member's GCF Repo Transactions collateralized with mortgage-backed securities during the Blackout Period.[42]

FICC also proposes to amend the Backtesting Charge to apply to Members that experience backtesting deficiencies during the trading day because of such Member's intraday trading activities.[43] The Intraday Backtesting Charge would be assessed on Members with portfolios that experience at least three intraday backtesting deficiencies over the prior 12-month period and would generally equal a Member's third largest historical intraday backtesting deficiency.[44]

*E. Amendment of the Excess Capital Premium Charge*

FICC proposes to amend GSD's calculation for determining the Excess Capital Premium. Currently, GSD assesses the Excess Capital Premium when a Member's VaR Charge exceeds the Member's Excess Capital.[45] Only Members that are brokers or dealers are required to report Excess Net Capital figures to FICC while other Members report net capital or equity capital, based on the type of regulation to which the Member is subject.[46] If a Member is not a broker or dealer, FICC uses the net capital or equity capital in order to calculate each Member's Excess Capital Premium.[47] FICC proposes to move to a net capital measure for broker Members, inter-dealer broker Members, and dealer Members.[48] FICC states that such a change would make the Excess Capital Premium for those Members more consistent with the equity capital measure that is used for other Members in the Excess Capital Premium calculation.[49]

*F. Additional Transparency Surrounding the Intraday Supplemental Fund Deposit*

Separate from the above changes to GSD's margin calculation, FICC proposes to provide transparency in the GSD Rules with respect to GSD's existing calculation of the Intraday Supplemental Fund Deposit.[50] FICC proposes to provide more detail in the GSD rules surrounding both GSD's calculation of the Intraday Supplemental Fund Deposit charge and its determination of whether to assess the charge.[51]

FICC calculates the Intraday Supplemental Fund Deposit by tracking three criteria for each Member.[52] The

[26] *Id.* The U.S. Treasury/Agency bond margin floor would be calculated by mapping each U.S. Treasury/Agency security to a tenor bucket, then multiplying the gross positions of each tenor bucket by its bond floor rate, and summing the results. *Id.* The bond floor rate of each tenor bucket would be a fraction (initially set at 10 percent) of an index-based haircut rate for such tenor bucket. *Id.*

[27] *Id.* The mortgage-backed securities margin floor would be calculated by multiplying the gross market value of the total value of mortgage-backed securities in a Member's portfolio by a designated amount, referred to as the pool floor rate, (initially set at 0.05 percent). *Id.*

[28] *See* Notice, *supra* note 4, at 4694. The proposed Blackout Period Exposure Adjustment would be calculated by (1) projecting an average pay-down rate of mortgage loan pools (based on historical pay down rates) for the government sponsored enterprises (Fannie Mae and Freddie Mac) and the Government National Mortgage Association (Ginnie Mae), respectively, then (2) multiplying the projected pay-down rate by the net positions of mortgage-backed securities in the related program, and (3) summing the results from each program.

[29] GCF Repo Transactions refer to transactions made on FICC's GCF Repo Service that enables dealers to trade general collateral repos, based on rate, term, and underlying product, throughout the day, without requiring intra-day, trade-for-trade settlement on a Delivery-versus-Payment basis.

[30] *See* Notice, *supra* note 4, at 4694.

[31] *Id.* Pool Factors are the percentage of the initial principal that remains outstanding on the mortgage loan pool underlying a mortgage-backed security, as published by the government-sponsored entity that is the issuer of such security.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* FICC states that it previously determined the Coverage Charge to be appropriate to address potential shortfalls in margin charges under the current, full revaluation approach.

[38] *Id.*

[39] *See* Notice, *supra* note 4, at 4695.

[40] *Id.*

[41] *Id.*

[42] *Id.* Additionally, during the Blackout Period, the Blackout Period Exposure Adjustment Charge, as described in Section I.C, will be applied to all applicable Members.

[43] *See* Notice, *supra* note 4, at 4695.

[44] *Id.*

[45] *See* Notice, *supra* note 4, at 4696. The term ''Excess Capital'' means Excess Net Capital, net assets, or equity capital as applicable, to a Member based on its type of regulation. GSD Rules, Rule 1, *supra* note 7.

[46] *See* Notice, *supra* note 4, at 4696.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

first criteria, the ''Dollar Threshold,'' evaluates whether a Member's Intraday VaR Charge equals or exceeds a set dollar amount when compared to the VaR Charge that was included in the most recent margin collection.[53] The second criteria, the ''Percentage Threshold,'' evaluates whether the Intraday VaR Charge equals or exceeds a percentage increase of the VaR Charge that was included in the most recent margin collection.[54] The third criteria, the ''Coverage Target,'' evaluates whether a Member is experiencing backtesting results below a 99 percent confidence level.[55] In the event that a Member's additional risk exposure breaches all three criteria, FICC assess an Intraday Supplemental Fund Deposit.[56] FICC also assess an Intraday Supplemental Fund Deposit if, under certain market conditions, a Member's Intraday VaR Charge breaches both the Dollar Threshold and the Percentage Threshold.[57]

*G. Description of the QRM Methodology*

The QRM Methodology document provides the methodology by which FICC would calculate the VaR Charge, with the proposed sensitivity approach, as well as other components of the Required Fund Deposit calculation.[58] The QRM Methodology document specifies (i) the model inputs, parameters, assumptions and qualitative adjustments; (ii) the calculation used to generate margin amounts; (iii) additional calculations used for benchmarking and monitoring purposes; (iv) theoretical analysis; (v) the process by which the VaR methodology was developed as well as its application and limitations; (vi) internal business requirements associated with the implementation and ongoing monitoring of the VaR methodology; (vii) the model change management process and governance framework (which includes the escalation process for adding a stressed period to the VaR calculation); (viii) the haircut methodology; (ix) the Blackout Period Exposure Adjustment calculations; (x) intraday margin calculation; and (xi) the Margin Proxy calculation.[59]

## III. Summary of Comments Received

The Commission received two comment letters in response to the Proposed Rule Change.[60] One comment letter, the Amherst Pierpont Letter, requested additional time to provide comments on the proposal.[61] A second comment letter, the Ronin Letter, objects to the Proposed Rule Change.

Ronin states that the Proposed Rule Change would ''unduly burden competition'' and be ''unnecessary and unfair'' because the VaR model redesign would necessitate higher margin requirements than are necessary for Members, specifically Members with a higher cost of capital.[62] Ronin states that FICC is tasked with determining that each Member's margin is adequate to satisfy losses that may arise from the liquidation of that Member's portfolio under a default scenario, but Ronin emphasizes that FICC must also ensure that ''backtesting practices are appropriate for determining the adequacy of [FICC's] margin resources.''[63] Ronin states that certain ''flaws'' in FICC's current backtesting methodology should be carefully examined before using backtesting deficiencies as justification for the proposed sensitivity VaR model.[64]

Ronin also states that FICC's assumption that it would take three days to liquidate or hedge the portfolio of a defaulted Member is incorrect.[65] Specifically, Ronin states that FICC incorrectly assumes that liquidity needs following a default will be identical for all Members.[66] Ronin states that the three-day liquidation period creates an ''arbitrary and extremely high hurdle'' for historical backtesting by overestimating the closeout-period risk posed to FICC by many of its Members by ''triple-counting'' a single event.[67]

Ronin also states that FICC lacks visibility into its Members' ''true risk'' because FICC only has access to a subset of a Members' portfolio and, consequently, FICC does not have a VaR model issue, but, instead, a ''data sharing problem.''[68] Ronin states that due to a lack of information regarding Members' entire portfolios, FICC is ''improperly'' applying its VaR model to only a subset of a Member's portfolio, resulting in incomplete margin calculations, which FICC should rectify through ''cross-margin integration'' with the Chicago Mercantile Exchange and FICC's Mortgage-Backed Securities Division.[69]

Finally, Ronin states that the VaR model input is ''biased'' because it continuously retains a ''stressed period'' in the proposed 10-year look-back period.[70] This results in higher than necessary margin withholdings because it ''treats every day for risk-related purposes as if the market is continuously in the midst of a financial crisis.''[71]

## IV. Proceedings To Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[72] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[73] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[74] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[75] which requires, among other things, that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, protect investors and the public interest;
- Section 17A(b)(3)(I) of the Act,[76] which requires that the rules of a clearing agency do not impose any burden on competition not necessary or

[53] *Id.*
[54] *See* Notice, *supra* note 4, at 4697.
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *See* Notice, *supra* note 4, at 4697.
[59] *Id.*
[60] *See supra,* note 5.
[61] The Commission is extending the period for review and public comment for the Proposed Rule Change associated with this proposal through this Order and has also extended the period for review and public comment on the Advanced Notice associated with this proposal, *supra* note 3.
[62] Ronin Letter at 1–9.
[63] Ronin Letter at 2.
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] Ronin Letter at 3.
[68] *Id.*
[69] Ronin Letter at 3–4.
[70] Ronin Letter at 4.
[71] *Id.*
[72] 15 U.S.C. 78s(b)(2)(B).
[73] *Id.*
[74] 15 U.S.C. 78q–1.
[75] 15 U.S.C. 78q–1(b)(3)(F).
[76] 15 U.S.C. 78q–1(b)(3)(I).

appropriate in furtherance of the purpose of the Act;

• Rule 17Ad–22(e)(4)(i) under the Act,[77] which requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

• Rule 17Ad–22(e)(6)(i) under the Act,[78] which requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;

• Rule 17Ad–22(e)(6)(ii) under the Act,[79] which requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;

• Rule 17Ad–22(e)(6)(iii) under the Act,[80] which requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;

• Rule 17Ad–22(e)(6)(iv) under the Act,[81] which requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable; and

• Rule 17Ad–22(e)(6)(v) under the Act,[82] which requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

## V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Sections 17A(b)(3)(F) and (I) of the Act, Rules 17Ad–22(e)(4)(i) and (6)(i)–(v) under the Act, cited above, or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4(g) under the Act,[83] any request for an opportunity to make an oral presentation.[84]

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by April 4, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 16, 2018. 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–FICC–2018–001 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–FICC–2018–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2018–001 and should be submitted on or before April 4, 2018. Rebuttal comments should be submitted by April 16, 2018.

[77] 17 CFR 240.17Ad–22(e)(4)(i).

[78] 17 CFR 240.17Ad–22(e)(6)(i).

[79] 17 CFR 240.17Ad–22(e)(6)(ii).

[80] 17 CFR 240.17Ad–22(e)(6)(iii).

[81] 17 CFR 240.17Ad–22(e)(6)(iv).

[82] 17 CFR 240.17Ad–22(e)(6)(v).

[83] 17 CFR 240.19b–4(g).

[84] Section 19(b)(2) of the Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[85] 17 CFR 200.30–3(a)(57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[85]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05565 Filed 3–19–18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–82875; File No. SR–CBOE–2018–022]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 6.56, Compression Forums

March 14, 2018.

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 March 8, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.56. The text of the proposed rule change is provided below.
(additions are *italicized;* deletions are [bracketed])

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**Cboe Exchange, Inc. Rules**

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**Rule 6.56. Compression Forums**

(a) Procedure.

(1) Prior to 4:30 p.m. Chicago time on the *second to last business day of each calendar week; the* second, third, and fourth to last business day of each calendar month*; and the second, third, fourth, fifth, and sixth to last business day of each calendar quarter,* in a manner and format determined by the Exchange, a Trading Permit Holder may provide the Exchange with a list of open SPX options positions that it would like to close through the compression forum for that calendar month (''compression-list positions''). Trading Permit Holders may also permit their Clearing Trading Permit Holders or the Clearing Corporation to submit a list of these positions to the Exchange on their behalf.

(2) Prior to the open of Regular Trading Hours on the last business day *of each calendar week; each of the last three business days of each calendar month; and each of the last five business days of each calendar quarter,* [second to last business day, and third to last business day of each calendar month,] the Exchange will make available to all Trading Permit Holders a list including the size of the offsetting compression-list positions (including all possible combinations of offsetting multi-leg positions) in each series (and multi-leg position) for which both long and short compression-list positions have been submitted to the Exchange (''compression-list positions file'').

(3)–(5) No change.

(6) The Exchange will make available an open outcry ''compression forum'' in which all Trading Permit Holders may participate on *the last business day of each calendar week,* each of the last three business days of every calendar month*, and each of the last five business days of every calendar quarter,* at a location on the trading floor determined by the Exchange. The compression forum will be held for four (4) hours during Regular Trading Hours on *the last business day of each calendar week,* each of the last three business days of every calendar month, *and each of the last five business days of every calendar quarter, unless* [or three (3) hours if] any of those days is an abbreviated trading day, as[t times] determined by the Exchange*, in which case the compression forum will be held for three (3) hours.*

(b)–(c) (No change).

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The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend rule 6.56 (Compression Forums) to increase the number of compression forums that are held on the Exchange.

Currently, compression forums are held on each of the last three business days of every calendar month.[5] In addition to holding compression forums on each of the last three business days of every calendar month, the Exchange seeks to hold compression forums on the last business day of every calendar week and each of the last five business days of every calendar quarter. In order to increase the frequency of compression forums the Exchange also proposes to increase the frequency with which TPHs submit compression-list positions to the Exchange and the frequency with which the Exchange generates the compression-list positions file. The Exchange notes that it is not proposing any modification to the type of information TPHs submit to the Exchange pursuant to Rule 6.56 nor modifying the manner by which the Exchange generates files and information pursuant to Rule 6.56. Rather, the Exchange is simply increasing the frequency with which TPHs may submit compression-list positions, the frequency with which the Exchange generates the compression-list positions file, and the number of compression forums that will be held on the Exchange. The Exchange believes that more frequent compression forums will further encourage the closing of positions, which, once closed, may serve to alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain SPX positions.

The Exchange proposes to implement this rule change on March 22, 2018, in order to allow a compression forum to be held on March 23rd and each of the last five business days of March.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] See Rule 6.56(a)(6).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will increase the number of compression forums that are held and thereby further encourage the closing of positions, which, in general, helps to protect investors and the public interest because closing positions via the compression process serves to alleviate the adverse impact of bank capital requirements.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would encourage the closing of positions, which, once closed, may serve to alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain SPX positions. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to the trading of SPX options, which are exclusively-listed on Cboe Options. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are eligible to participant through Cboe Options TPHs. Furthermore, participation in compression forums is completely voluntary and open to all TPHs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative on March 22, 2018 to allow for the compression forum to be held on March 23, 2018, in addition to each of the last five business days of March as the calendar quarter ends. The Commission notes that the proposal is not modifying the information that TPHs submit or the information that the Exchange prepares, but rather adds a few additional days on which compression forums will be held and correspondingly increases as the number of opportunities for TPHs to submit positions and receive compression lists from the Exchange in connection with those compression forums. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on March 22, 2018.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2018–022 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–CBOE–2018–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waving the 30-day operative delay, the Commission has considered the purposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2018–022 and should be submitted on or before April 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–05564 Filed 3–19–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, March 22, 2018.

**PLACE:** Closed Commission Hearing, Room 10800.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: March 15, 2018.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–05658 Filed 3–16–18; 11:15 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on July 17, 2017 (**Federal Register**/Vol. 82, No. 135/pp. 32757–32758).

**DATES:** Submit comments to the Office of Management and Budget (OMB) on or before April 19, 2018.

**FOR FURTHER INFORMATION CONTACT:** Amy Berning, Contracting Officer's Representative—Task Order, DOT/NHTSA (NTI–131), 1200 New Jersey Avenue SE, W46–497, Washington, DC 20590. Ms. Berning's phone number is (202) 366–5587 and her email address is *amy.berning@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* None.

*Title:* Crash Risk Associated with Drug and Alcohol Use by Drivers in Fatal and Serious Injury Crashes.

*Form No.:* NHTSA Form 1420, 1421, 1422.

*Type of Review:* Regular.

*Respondents:* Participants will include seriously or fatally injured crash-involved drivers ($n$ = 2,500) and matched non-crash-involved drivers ($n$ = 5,000). Crash-involved drivers will include seriously injured drivers who are transported to a trauma center by emergency medical services and fatally injured drivers who are transported directly to the medical examiner's office. Sampling will occur at three trauma centers and within the roadway catchment area served by the trauma center(s). Non-crash-involved drivers will be matched to injured drivers on crash day of the week, crash time of day, and crash direction of travel.

*Estimated Time per Participant:* Surveys will be administered to control participants. Questions will be on demographics, trip information, and opinions about driving while using alcohol and or drugs. Control participants will also be asked to provide a preliminary breath test (PBT) sample, and a blood sample.

For control subjects, the total estimated time is approximately 5 minutes to complete the recruiting and consent process, 5 minutes to complete the survey, and 10 minutes to provide PBT and blood samples (20 minutes total). The time to decline participation would take approximately 1 minute to listen to the researcher describe the study. A person may drive away if not interested in participating.

For crash-involved drivers who survived, it will take less than one minute for obtaining the blood sample, and 4 minutes to review the study's description—and if not interested in participating—to complete the ''opt-out'' form (5 minutes total).

For crash-involved drivers who died, it will take less than one minute to obtain the blood sample. There will be no burden to the deceased person or to the public.

*Total Estimated Annual Burden Hours:* 965.5 hours per year; for a total of 1,931 hours across two years.

*Frequency of Collection:* Each participant will only respond to the survey and/or blood sample requests a single time during the study period.

*Abstract:* The National Highway Traffic Safety Administration (NHTSA)

seeks to examine the risk of being severely or fatally injured in a motor vehicle crash when drivers use licit and/or illicit drugs. This effort will involve studying seriously or fatally injured drivers in crashes and matched non-crash-involved drivers. Participants will include seriously injured drivers who are transported to a trauma center by emergency medical services and fatally injured drivers transported directly to the medical examiner's office. This study will employ a case-control design that matches two drivers on the roadway for every crash-involved driver. Control drivers will be selected at or near the location of the earlier crash. Researchers will match control drivers on crash day of the week, crash time of day, and crash direction of travel. Data collection will include a blood sample from both crash-involved and control drivers. Collection of samples from seriously injured drivers will be subject to State and Trauma Center policies regarding collection of fluid samples for research purposes. Samples from fatally injured drivers will be collected in accord with State, Trauma Center, and/or coroner/medical examiner policies. Self-report surveys will be administered to control participants to collect demographic information, reason for driving trip, and opinions about driving while using alcohol or drugs. All participating control drivers will be asked to respond to the survey items, provide a preliminary breath test sample, and provide a sample of blood.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: (202) 395–5806.

*Comments are Invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on March 15, 2018.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2018–05593 Filed 3–19–18; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. DOT–NHTSA–2017–0104]**

### Notice and Request for Comments

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 28, 2017. Comments received from the Alliance of Automobile Manufacturers, Inc.

**DATES:** Comments must be submitted on or before April 19, 2018.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street, NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Gary R. Toth, Office of Data Acquisitions (NSA–0100), (202) 366–5378, National Highway Traffic Safety Administration, Room W53–505, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:**

*Title:* Crash Investigation Sampling System (CISS).

*OMB Control Number:* 2127–0706.

*Type of Request:* Collection of motor vehicle crash data.

*Abstract:* The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). The National Highway Traffic Safety Administration has been investigating high severity crashes and collecting crash data through its National Automotive Sampling System (NASS) Crashworthiness Data System (NASS–CDS) and Special Crash Investigation (SCI) programs. The NASS was designed in the 1970's to collect data. Due to population shifts and vehicle transformation, among many other changes since NASS was established, the crash population has changed in the country. At the same time, the data needs of the transportation community have significantly increased over the last three decades. The scope of traffic safety studies has also been expanding. For example, the primary focus of the original NASS design was to enhance crashworthiness by providing detailed information about crush damage, restraint system performance and injury mechanisms. In recent years, however, the transportation community has been increasingly more interested in adding data elements related to what happens before a crash and related crash avoidance safety countermeasures.

Recognizing the importance as well as the limitations of the past NASS system, NHTSA has undertaken a modernization effort to upgrade our data systems by improving the information technology infrastructure, updating the data we collect and reexamining the sample sites. The goal of this overall modernization effort was to develop a new crash data system that meets current and future data needs. The newly redesigned investigation-based acquisition system is a nationally-representative sample of passenger vehicle crashes. This newly-designed system, the Crash Investigation Sampling System (CISS), will focus on detailed investigation of passenger vehicle crashes. CISS was implemented in 2015 with a goal of thirty-two (32) sites fully operational by July of 2018.

For the investigation-based acquisition process, once a crash has been selected for investigation, crash technicians locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. These data are used to describe and analyze circumstances, mechanisms, and consequences of serious motor vehicle

crashes in the United States. The collection of interview data aids in this effort.

NHTSA published a notice in the **Federal Register** with a 60-day public comment period to announce this proposed information collection on December 28, 2017, Volume 82, Number 248.

*Affected Public:* Passenger Motor Vehicle Operators.

*Estimated Number of Respondents:* 9,450.

*Frequency:* Annual.

*Estimated Total Annual Burden Hours:* 5,605 hours.

*Estimated Total Annual Burden Cost:* $140,125.

*Public Comments Invited:* You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

**Terry T. Shelton,**

*Associate Administrator, National Center for Statistics and Analysis.*

[FR Doc. 2018–05591 Filed 3–19–18; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date.

**FOR FURTHER INFORMATION CONTACT:** OFAC: 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; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

#### Notice of OFAC Actions

On March 15, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

*Individuals*

1. AFANASYEV, Sergei (a.k.a. AFANASYEV, Sergey), Russia; DOB 16 May 1963; Gender Male (individual) [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of the Countering America's Adversaries Through Sanctions Act, Public Law 115–44, (CAATSA), for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, a person designated under Section 224(a)(1)(A) of CAATSA.

2. ALEXSEYEV, Vladimir Stepanovich; DOB 24 Apr 1961; Passport 100115154 (Russia); First Deputy Chief of GRU (individual) [CYBER2] [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, a person designated under Section 224(a)(1)(A) of CAATSA.

3. GIZUNOV, Sergey Aleksandrovich (a.k.a. GIZUNOV, Sergey); DOB 18 Oct 1956; Gender Male; Passport 4501712967 (Russia); Deputy Chief of GRU (individual) [CYBER2] [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, a person designated under Section 224(a)(1)(A) of CAATSA.

4. KOROBOV, Igor Valentinovich (a.k.a. KOROBOV, Igor); DOB 03 Aug 1956; nationality Russia; Gender Male; Passport 100119726 (Russia); alt. Passport 100115101 (Russia); Chief of GRU (individual) [CYBER2] [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, a person designated under Section 224(a)(1)(A) of CAATSA.

5. KOSTYUKOV, Igor Olegovich (a.k.a. KOSTYUKOV, Igor); DOB 21 Feb 1961; Passport 100130896 (Russia); alt. Passport 100132253 (Russia); First Deputy Chief of GRU (individual) [CYBER2] [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, a person designated under Section 224(a)(1)(A) of CAATSA.

6. MOLCHANOV, Grigoriy Viktorovich; DOB 01 Jan 1956 to 31 Dec 1956; citizen Russia; Gender Male (individual) [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, a person designated under Section 224(a)(1)(A) of CAATSA.

*Entities*

1. MAIN INTELLIGENCE DIRECTORATE (a.k.a. GLAVNOE RAZVEDYVATEL'NOE UPRAVLENIE (Cyrillic: ГЛАВНОЕ РАЗВЕДЫВАТЕЛЬНОЕ УПРАВЛЕНИЕ); a.k.a. GRU; a.k.a. MAIN DIRECTORATE OF THE GENERAL STAFF; a.k.a. MAIN INTELLIGENCE DEPARTMENT), Khoroshevskoye Shosse 76, Khodinka, Moscow, Russia; Ministry of Defence of the Russian Federation, Frunzenskaya nab., 22/2, Moscow 119160, Russia [CYBER2] [CAATSA—RUSSIA].

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of

the Government of the Russian Federation.

2. FEDERAL SECURITY SERVICE (a.k.a. FEDERALNAYA SLUZHBA BEZOPASNOSTI; a.k.a. FSB), Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia [CYBER2] [CAATSA—RUSSIA].

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Dated: March 15, 2018.

**John E. Smith,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2018–05600 Filed 3–19–18; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**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 or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date.

**FOR FURTHER INFORMATION CONTACT:** OFAC: 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; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

#### Notice of OFAC Actions

On March 15, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

*Individuals*

1. ASLANOV, Dzheykhun Nasimi Ogly (a.k.a. ASLANOV, Jay; a.k.a. ASLANOV, Jayhoon), Russia; DOB 01 Jan 1990; POB Azerbaijan; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' (E.O. 13694), as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

2. BOGACHEVA, Anna Vladislavovna, Russia; DOB 13 Mar 1988; Gender Female (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

3. BOVDA, Maria Anatolyevna (a.k.a. BELYAEVA, Maria Anatolyevna), Russia; DOB 21 Feb 1986; Gender Female (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

4. BOVDA, Robert Sergeyevich, Russia; DOB 27 Aug 1989; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

5. BURCHIK, Mikhail Leonidovich (a.k.a. ABRAMOV, Mikhail), Russia; DOB 07 Jun 1986; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

6. BYSTROV, Mikhail Ivanovich, Russia; DOB 21 Dec 1958; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended,

for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

7. KAVERZINA, Irina Viktorovna, Russia; DOB 18 Jul 1986; Gender Female (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

8. KRYLOVA, Aleksandra Yuryevna, Russia; DOB 01 Jul 1986; Gender Female (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

9. PODKOPAEV, Vadim Vladimirovich, Russia; DOB 01 May 1985; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

10. POLOZOV, Sergey Pavlovich, Russia; DOB 13 Oct 1987; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

11. PRIGOZHIN, Yevgeniy Viktorovich (a.k.a. PRIGOZHIN, Evgeny), Russia; DOB 01 Jun 1961; Gender Male (individual) [UKRAINE—E.O. 13661] [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

12. VASILCHENKO, Gleb Igorevich, Russia; DOB 13 Apr 1991; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

13. VENKOV, Vladimir, Russia; DOB 28 May 1990; Gender Male (individual) [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted for or on behalf of INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

Also designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

*Entities*

1. INTERNET RESEARCH AGENCY LLC (a.k.a. AZIMUT LLC; a.k.a. GLAVSET LLC; a.k.a. MEDIASINTEZ LLC; a.k.a. MIXINFO LLC; a.k.a. NOVINFO LLC), 55 Savushkina Street, St. Petersburg, Russia [CYBER2].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13694, as amended, for tampering with, altering, or causing a misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions.

2. CONCORD CATERING, Nab. Lieutenant Schmidt D. 7, von Keyserling Mansion, St. Petersburg 119034, Russia; Ulitsa Volkhonka Dom 9, Moscow 119019, Russia [UKRAINE—E.O. 13661] [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in property are blocked pursuant to E.O. 13694.

3. LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING (a.k.a. KONKORD MENEDZHMENT I KONSALTING, OOO; a.k.a. LLC CONCORD MANAGEMENT AND CONSULTING; a.k.a. OBSHCHESTVO S OGRANNICHENNOI OTVETSTVENNOSTYU KONKORD MENEDZHMENT I KONSALTING), D. 13 Litera A, Pom. 2–N N4, Naberezhnaya Reki Fontanki, St. Petersburg 191011, Russia; Registration ID 1037843002515 [UKRAINE—E.O. 13661] [CYBER2] (Linked To: INTERNET RESEARCH AGENCY LLC).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored or provided financial, material, or technological support for, or goods in services to or in support of, INTERNET RESEARCH AGENCY LLC, a person whose property and interests in

property are blocked pursuant to E.O. 13694.

Dated: March 15, 2018.

**John E. Smith,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2018–05599 Filed 3–19–18; 8:45 am]

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**H.R. 294/P.L. 115–133**
To designate the facility of the United States Postal Service located at 2700 Cullen Boulevard in Pearland, Texas, as the ''Endy Nddiobong Ekpanya Post Office Building''. (Mar. 16, 2018; 132 Stat. 339)

**H.R. 452/P.L. 115–134**
To designate the facility of the United States Postal Service located at 324 West Saint Louis Street in Pacific, Missouri, as the ''Specialist Jeffrey L. White, Jr. Post Office''. (Mar. 16, 2018; 132 Stat. 340)

**H.R. 535/P.L. 115–135**
Taiwan Travel Act (Mar. 16, 2018; 132 Stat. 341)

**H.R. 3656/P.L. 115–136**
To amend title 38, United States Code, to provide for a consistent eligibility date for provision of Department of Veterans Affairs memorial headstones and markers for eligible spouses and dependent children of veterans whose remains are unavailable. (Mar. 16, 2018; 132 Stat. 343)

**S. 831/P.L. 115–137**
To designate the facility of the United States Postal Service located at 120 West Pike Street in Canonsburg, Pennsylvania, as the ''Police Officer Scott Bashioum Post Office Building''. (Mar. 16, 2018; 132 Stat. 344)

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