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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, and 226

[FNS–2019–0005]

RIN 0584–AE65

Delayed Implementation of Grains Ounce Equivalents in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Correcting amendments.

SUMMARY: On September 25, 2019, the Food and Nutrition Service published meal pattern tables in Agency rules. This document corrects the presentation of tables in the final rule.

DATES: *Effective Date:* February 12, 2020.

FOR FURTHER INFORMATION CONTACT: Andrea Farmer, 703–305–2590, *andrea.farmer@usda.gov.*

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a final rule, *Delayed Implementation of Grains Ounce Equivalents in the Child and Adult Care Food Program,* in the **Federal Register** at 84 FR 50287, on September 25, 2019. The final rule included tables presenting meal pattern requirements for the service of meals to infants in the Child and Adult Care Food Program, National School Lunch Program, and School Breakfast Program. However, the published meal pattern tables did not clearly present the information meal planners need to determine which meal components are required and how much of a food item contributes to a reimbursable meal for infants 6 through 11 months. For ease of readers, this document displays the infant meal pattern tables at 7 CFR 210.10(o)(4)(ii), 210.10(q)(2), 220.8(p)(2), and 226.20(b)(5). This document also displays the preschool snack meal pattern table at 7 CFR 210.10(o)(3)(ii).

List of Subjects

7 CFR Part 210

National School Lunch Program, Meal requirements for lunches and requirements for afterschool snacks.

7 CFR Part 220

School Breakfast Program, Meal requirements for breakfasts.

7 CFR Part 226

Child and Adult Care Food Program, Requirements for meals.

Accordingly, 7 CFR parts 210, 220, and 226 are corrected by making the following correcting amendments:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.10, revise the meal pattern tables in paragraphs (o)(3)(ii), (o)(4)(ii), and (q)(2) to read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(o) * * *

(3) * * *

(ii) *Preschooler snack meal pattern table.* The minimum amounts of food components to be served at snack are as follows:

PRESCHOOL SNACK MEAL PATTERN

Food components and food items [1]	Minimum quantities	
	Ages 1–2	Ages 3–5
Fluid Milk [2]	4 fluid ounces	4 fluid ounces.
Meat/Meat Alternates (edible portion as served):		
Lean meat, poultry, or fish	½ ounce	½ ounce.
Tofu, soy products, or alternate protein products [3]	½ ounce	½ ounce.
Cheese	½ ounce	½ ounce.
Large egg	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup.
Peanut butter or soy nut butter or other nut or seed butters	1 tablespoon	1 tablespoon.
Yogurt, plain or flavored unsweetened or sweetened [4]	2 ounces or ¼ cup	2 ounces or ¼ cup.
Peanuts, soy nuts, tree nuts, or seeds	½ ounce	½ ounce.
Vegetables [5]	½ cup	½ cup.
Fruits [5]	½ cup	½ cup.
Grains (ounce equivalent): [6] [7]		
Whole grain-rich or enriched bread	½ slice	½ slice.
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin	½ serving	½ serving.
Whole grain-rich, enriched, or fortified cooked breakfast cereal,[8] cereal grain, and/or pasta.	¼ cup	¼ cup.
Whole grain-rich, enriched, or fortified ready-to-eat cereal (dry, cold) [8]		
Flakes or rounds	½ cup	½ cup.
Puffed cereal	¾ cup	¾ cup.
Granola	⅛ cup	⅛ cup.

Endnotes:

[1] Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.
[2] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.
[3] Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.
[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[5] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.
[6] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.
[7] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.
[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(4) * * *

(ii) *Infant snack meal pattern table.* The minimum amounts of food components to be served at snack are as follows:

INFANT SNACK MEAL PATTERN

Age birth through 5 months	Age 6 through 11 months
4–6 fluid ounces breastmilk [1] or formula [2]	2–4 fluid ounces breastmilk [1] or formula; [2] and 0–½ slice bread; [3 4] or 0–2 crackers; [3 4] or 0–4 tablespoons infant cereal [2 4] or ready-to-eat breakfast cereal; [3 4 5 6] and 0–2 tablespoons vegetable or fruit, or a combination of both. [6 7]

Endnotes:
[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] A serving of grains must be whole grain-rich, enriched meal, or enriched flour.
[4] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.
[5] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).
[6] A serving of this component is required when the infant is developmentally ready to accept it.
[7] Fruit and vegetable juices must not be served.

* * * * *

(q) * * *

(2) *Infant lunch meal pattern table.* The minimum amounts of food components to be served at lunch are as follows:

INFANT LUNCH MEAL PATTERN

Age birth through 5 months	Age 6 through 11 months
4–6 fluid ounces breastmilk [1] or formula [2]	6–8 fluid ounces breastmilk [1] or formula; [2] and 0–4 tablespoons infant cereal, [2 3] meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and 0–2 tablespoons vegetable or fruit, or a combination of both. [5 6]

Endnotes:
[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.
[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 3. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 4. In § 220.8, revise the meal pattern table in paragraph (p)(2) to read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(p) * * *

(2) *Infant breakfast meal pattern table.* The minimum amounts of food components to be served at breakfast are as follows:

INFANT BREAKFAST MEAL PATTERN

Age birth through 5 months	Age 6 through 11 months
4–6 fluid ounces breastmilk [1] or formula [2]	6–8 fluid ounces breastmilk [1] or formula; [2] and 0–4 tablespoons infant cereal,[2 3] meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and 0–2 tablespoons vegetable or fruit, or a combination of both [5 6]

Endnotes:
[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.
[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 5. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended, 42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766.

■ 6. In § 226.20, revise the meal pattern table in paragraph (b)(5) to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(b) * * *

(5) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (b)(4) of this section, are:

INFANT MEAL PATTERNS

Infants	Age birth through 5 months	Age 6 through 11 months
Breakfast, Lunch, or Supper	4–6 fluid ounces breastmilk [1] or formula [2].	6–8 fluid ounces breastmilk [1] or formula; [2] and 0–4 tablespoons infant cereal,[2 3] meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and 0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]
Snack	4–6 fluid ounces breastmilk [1] or formula [2].	2–4 fluid ounces breastmilk [1] or formula; [2] and 0–½ slice bread; [3 7] or 0–2 crackers; [3 7] or 0–4 tablespoons infant cereal [2 3] or ready-to-eat breakfast cereal; [3 5 7 8] and 0–2 tablespoons vegetable or fruit, or a combination of both. [5 6]

Endnotes:
[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.
[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.
[7] A serving of grains must be whole grain-rich, enriched meal, or enriched flour.
[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

* * * * *

Dated: January 14, 2020.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–02245 Filed 2–11–20; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1695]

RIN 7100–AF 71

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (''IORR'') and the rate of interest paid on excess balances (''IOER'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 1.60 percent and IOER is 1.60 percent, a 0.05 percentage

point increase from their prior levels. The amendments are intended to enhance the role of such rates of interest in maintaining the Federal funds rate in the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: This rule is effective February 12, 2020.

Applicability date: The IORR and IOER rate changes were applicable on January 30, 2020.

FOR FURTHER INFORMATION CONTACT:

Sophia H. Allison, Senior Special Counsel (202–452–3565), or Justyna Bolter, Senior Attorney (202–452–2686), Legal Division, or Francis Martinez, Senior Financial Institution & Policy Analyst (202–245–4217), or Laura Lipscomb, Assistant Director (202–912–7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D specified a rate of 1.55 percent for both IORR and IOER.[6]

II. Amendments to IORR and IOER

The Board is amending § 204.10(b)(5) of Regulation D to specify that IORR is 1.60 percent and IOER is 1.60 percent, a 0.05 percentage point increase in each rate. This decision was announced on January 29, 2020, with an effective date of January 30, 2020, in the Federal Reserve Implementation Note that accompanied the FOMC's statement on January 29, 2020. The FOMC statement stated that the Committee decided to maintain the target range for the federal funds rate at 1½ to 1¾ percent.

The Federal Reserve Implementation Note stated:

> The Board of Governors of the Federal Reserve System voted unanimously to set the interest rate paid on required and excess reserve balances at 1.60 percent, effective January 30, 2020. Setting the interest rate paid on required and excess reserve balances 10 basis points above the bottom of the target range for the federal funds rate is intended to foster trading in the federal funds market at rates well within the FOMC's target range.

As a result, the Board is amending § 204.10(b)(5) of Regulation D to change IORR to 1.60 percent and IOER to 1.60 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'')[7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.''[8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate changes for IORR and IOER that are reflected in the final amendments to Regulation D were made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to these final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(5) to read as follows:

[1] 12 U.S.C. 461(b).

[2] 12 CFR 204.5(a)(1).

[3] 12 U.S.C. 461(b)(1)(A) & (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(5).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

TABLE 1 TO PARAGRAPH (b)(5)

	Rate (percent)
IORR	1.60
IOER	1.60

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 30, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–02119 Filed 2–11–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0720; Product Identifier 2019–NM–117–AD; Amendment 39–19831; AD 2020–02–19]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2003–09–04 R1, which applied to certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. AD 2003–09–04 R1 required revising the airworthiness limitations for certain structural inspections; repair if necessary; and submission of inspection findings to the airplane manufacturer. This AD revises the applicability to include additional airplanes; revises certain compliance times; and requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a report of fatigue cracks occurring on the pressure floor skin at fuselage stations (FS) 460 and 513. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 18, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 18, 2020.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0720.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0720; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2002–39R2, dated August 15, 2019 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0720.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–09–04 R1, Amendment 39–13305 (68 FR 54985, September 22, 2003) (''AD 2003–09–04 R1''). AD 2003–09–04 R1 applied to certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. The NPRM published in the **Federal Register** on October 30, 2019 (84 FR 58062). The NPRM was prompted by a report of fatigue cracks occurring on the pressure floor skin at FS 460 and 513. The NPRM proposed to revise the applicability to include additional airplanes; revise certain compliance times; and require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address fatigue cracks, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight. See the MCAI for additional background information.

Comments

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

Request To Revise Certain Language

SkyWest Airlines requested that the FAA revise certain language in the proposed AD. SkyWest Airlines suggested that the wording in paragraph (i)(2) of the proposed AD be revised to more closely match the wording in paragraph (c)(2) of AD 2003–09–04 R1. SkyWest Airlines noted that paragraph (i)(2) of the proposed AD states that new airworthiness limitations and inspection requirements are to be inserted into a Bombardier Temporary Revision, but Temporary Revisions are issued and controlled by Bombardier. SkyWest Airlines stated that it appears that the intent of paragraph (i)(2) of the proposed AD is to track the additional airworthiness limitations and inspection requirements introduced by the repair described in paragraph (i)(1) of the proposed AD.

The FAA agrees to clarify. The FAA has revised paragraph (i) of this AD to clarify that operators must comply with any repair instructions, including any new airworthiness limitations and inspection requirements, approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). As part of this clarification, the FAA revised the content that was in paragraph (i)(2) of the proposed AD, combined the content of paragraph (i)(1) with the revised content of paragraph (i)(2), and moved that combined content into paragraph (i) of this AD (eliminating paragraphs (i)(1) and (2) of the proposed AD).

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued Bombardier CL–600–2B19 Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual; and Bombardier CL–600–2B19 Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual. These temporary revisions describe airworthiness limitations for inspections of the pressure floor skin. These documents are distinct since they describe different airworthiness limitations.

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

Costs of Compliance

The FAA estimates that this AD would affect 37 airplanes of U.S. registry.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–09–04 R1, Amendment 39–13305 (68 FR 54985, September 22, 2003), and adding the following new AD:

2020–02–19 Bombardier, Inc.: Amendment 39–19831; Docket No. FAA–2019–0720; Product Identifier 2019–NM–117–AD.

(a) Effective Date

This AD is effective March 18, 2020.

(b) Affected ADs

This AD replaces AD 2003–09–04 R1, Amendment 39–13305 (68 FR 54985, September 22, 2003) (''AD 2003–09–04 R1'').

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 8999 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by a report of fatigue cracks occurring on the pressure floor skin at fuselage stations (FS) 460 and 513. The FAA is issuing this AD to address such fatigue cracks, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight.

(f) Compliance

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

(g) Maintenance Program Revision for Serial Numbers 7003 through 8079

For airplane serial numbers 7003 through 8079 inclusive: Within 30 days from the effective date this AD, revise the existing maintenance or inspection program, as applicable, by incorporating the information specified in Airworthiness Limitations (AWL) task number 53–41–149 specified in Bombardier CL–600–2B19 Airworthiness Requirements Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual.

(1) The initial compliance time for doing the task is at the time specified in figure 1 to paragraph (g)(1) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

Figure 1 to paragraph (g)(1) – *Initial Inspection Phase-In*

Total Flight Cycles (FC) Accumulated as of October 7, 2003 (the effective date of AD 2003-09-04 R1)	Compliance Schedule for Initial Inspection
8,000 FC or less	Prior to exceeding 10,000 total FC
More than 8,000 FC but less than 10,000 FC	Within 2,000 FC from October 7, 2003 (the effective date of FAA AD 2003-09-04 R1)
10,000 FC or more but less than 15,000 FC	Within 1,500 FC from October 7, 2003 (the effective date of FAA AD 2003-09-04 R1)
15,000 FC or more but less than 17,325 FC	Within 1,000 FC from the effective date of October 7, 2003 (the effective date of FAA AD 2003-09-04 R1)
17,325 FC or more but less than 18,325 FC	Prior to exceeding 18,325 total FC
18,325 FC or more	Not required if the initial inspection has already been performed in accordance with AWL Task number 53-41-149

(2) For airplanes on which Bombardier Service Bulletin 601R–53–067, Bombardier Service Bulletin 601R–53–077, and AWL task number 53–41–194 have been done, the inspections in AWL task number 53–41–149 are not required in the areas covered by doublers at FS460 and FS513.

(3) For airplanes on which the initial inspection has been accomplished at 18,325 or more total flight cycles, and no cracks were found, as of October 7, 2003 (the effective date of AD 2003–09–04), the repetitive interval of 10,000 flight cycles starts from the completion date of the initial inspection.

(4) For airplanes that were previously inspected using AWL task number 53–41–193, perform an inspection using the information specified in AWL task number 53–41–149, provided in Bombardier CL–600–2B19 Airworthiness Requirements Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual, within 10,000 flight cycles from the previously accomplished inspection.

(h) Maintenance Program Revision for Serial Numbers 8080 through 8999

(1) For airplane serial numbers 8080 through 8999 inclusive: Within 30 days from the effective date of this AD, revise the existing maintenance or inspection program, as applicable, by incorporating the information specified in AWL task number 53–41–193 specified in Bombardier CL–600–2B19 Airworthiness Limitations Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual. Except as specified in paragraph (h)(2) of this AD, the initial compliance time for doing the task is at the time specified in Bombardier CL–600–2B19 Airworthiness Requirements Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that were previously inspected using AWL task number 53–41–149, perform an inspection by incorporating the information specified in AWL task number 53–41–193, provided in Bombardier CL–600–2B19 Airworthiness Requirements Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual, within 10,000 flight cycles from the previously accomplished inspection.

(i) Corrective Actions

If any crack is found during any inspection required by this AD, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO), and accomplish any repair instructions, including any new airworthiness limitations and inspection requirements accordingly. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) No Alternative Actions or Intervals

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

(k) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531.

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

(ii) AMOCs approved previously for AD 2003–09–04 R1 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2002–39R2, dated August 15, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0720.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Bombardier CL–600–2B19 Maintenance Requirements Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual.

(ii) Bombardier CL–600–2B19 Maintenance Requirements Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 27, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02718 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0700; Product Identifier 2019–NM–105–AD; Amendment 39–19833; AD 2020–02–21]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–19–25 and AD 2014–03–12, which applied to all Dassault Aviation Model FALCON 2000 airplanes. Those ADs required revising the existing maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. Since the FAA issued AD 2018–19–25, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This AD continues to require those maintenance or inspection program revisions, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 18, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 18, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 2, 2018 (83 FR 48924, September 28, 2018).

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0700.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0700; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0131, dated June 11, 2019 (''EASA AD 2019–0131'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FALCON 2000 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0700.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2018–19–25, Amendment 39–19426 (83 FR 48924, September 28, 2018) (''AD 2018–19–25'') and AD 2014–03–12, Amendment 39–17749 (79 FR 11693, March 3, 2014) (''AD 2014–03–12''). AD 2018–19–25 applied to all Dassault Aviation Model FALCON 2000 airplanes. The NPRM published in the **Federal Register** on September 25, 2019 (84 FR 50336). The NPRM resulted from a determination

that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address reduced controllability of the airplane. See the MCAI for additional background information.

Comments

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

Request To List New Requirements

NetJets Aviation (NJA) requested that the additional required inspection items or changes from Chapter 5–40, Airworthiness Limitations, Revision 20, dated November 2018, of the Dassault Aviation Falcon 2000 Maintenance Manual be listed in paragraph (i) of the proposed AD to ensure operators are meeting the requirements.

The FAA disagrees with the commenter's request because the required action is for the operators to incorporate the entirety of the information specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated November 2018, of the Dassault Aviation Falcon 2000 Maintenance Manual into their maintenance or inspection program, as applicable, and not just the changes that are made in Revision 20 (the changes are described in the ''Information to Operators'' section of Revision 20). The AD has not been changed in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, Revision 20, dated November 2018, of the Dassault Aviation Falcon 2000 Maintenance Manual. This service information describes airworthiness limitations for safe life limits.

This AD also requires Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of November 2, 2018 (83 FR 48924, September 28, 2018).

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

Costs of Compliance

The FAA estimates that this AD affects 200 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–19–25 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. removing Airworthiness Directive (AD) 2014–03–12, Amendment 39–17749 (79 FR 11693, March 3, 2014); and AD 2018–19–25, Amendment 39–19426 (83 FR 48924, September 28, 2018); and

■ b. adding the following new AD:

2020–02–21 Dassault Aviation: Amendment 39–19833; Docket No. FAA–2019–0700; Product Identifier 2019–NM–105–AD.

(a) Effective Date

This AD is effective March 18, 2020.

(b) Affected ADs

(1) This AD replaces AD 2014–03–12, Amendment 39–17749 (79 FR 11693, March 3, 2014) (''AD 2014–03–12''); and AD 2018–19–25, Amendment 39–19426 (83 FR 48924, September 28, 2018) (''AD 2018–19–25'').

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

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

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2018–19–25, with no changes. Within 90 days after November 2, 2018 (the effective date of AD 2018–19–25), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual. The initial compliance times for doing the tasks are at the time specified in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, or within 90 days after November 2, 2018 (the effective date of AD 2018–19–25), whichever occurs later; except as required by paragraphs (g)(1) through (3) of this AD. The term ''LDG'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, means total airplane landings. The term ''FH'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, means total flight hours. The term ''FC'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, means total flight cycles.

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

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

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

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

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

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

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

(h) Retained No Alternative Actions or Intervals With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2018–19–25, with a new exception. Except as required by paragraph (i) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), or intervals, may be used unless the actions, or intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Requirement of This AD: Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated November 2018, of the Dassault Aviation Falcon 2000 Maintenance Manual. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated November 2018, of the Dassault Aviation Falcon 2000 Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later, except as required by paragraphs (i)(1) through (3) of this AD. The term ''LDG'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means total airplane landings. The term ''FH'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means total flight hours. The term ''FC'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means total flight cycles. The term ''M'' in the ''First Inspection'' column of any table in the service information specified in this paragraph means months since date of issuance of the original airworthiness certificate or original export certificate of airworthiness. Accomplishing the actions required by this paragraph terminates all requirements of paragraph (g) of this AD.

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

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

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

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

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

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

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

(j) New No Alternative Actions or Intervals

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

(k) Terminating Action for Certain Actions in AD 2010–26–05

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

(l) Other FAA AD Provisions

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

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

(ii) AMOCs approved previously for AD 2018–19–25, Amendment 39–19426 (83 FR 48924, September 28, 2018), are approved as AMOCs for the corresponding provisions of this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2019–0131, dated June 11, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0700.

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

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 18, 2020.

(i) Chapter 5–40, Airworthiness Limitations, Revision 20, dated November 2018, of the Dassault Aviation Falcon 2000 Maintenance Manual.

(ii) [Reserved]

(4) The following service information was approved for IBR on November 2, 2018 (83 FR 48924, September 28, 2018).

(i) Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual.

(ii) [Reserved]

(5) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *https://www.dassaultfalcon.com.*

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

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 28, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02720 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0093; Product Identifier 2020–NM–026–AD; Amendment 39–19837; AD 2020–03–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by two reports of abnormal operation of the components of the ENG START panel or ECP due to liquid spillage in the system, and the subsequent uncommanded engine inflight shutdown (IFSD) of one engine in each case. This AD requires revising the existing airplane flight manual (AFM) to define a liquid-prohibited zone in the flight deck and provide procedures following liquid spillage on the center pedestal, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 14, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 14, 2020.

The FAA must receive comments on this AD by March 30, 2020.

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

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

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0093.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0093; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2020–0020–E, dated February 5, 2020, corrected February 6, 2020 (''EASA AD 2020–0020–E'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to address an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

This AD was prompted by two reports of abnormal operation of the components of the ENG START panel or ECP due to liquid spillage in the system, and the subsequent uncommanded engine IFSD of one engine in each case. The FAA is issuing this AD to address the potential for dual-engine IFSD, possibly resulting in a forced landing with consequent damage to the airplane and injury to occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0020–E describes procedures for revising the existing airplane flight manual (AFM) to define a liquid-prohibited zone in the flight deck and provide procedures following liquid spillage on the center pedestal. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a

bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the agency evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2020–0020–E described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0020–E is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0020–E in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0020–E that is required for compliance with EASA AD 2020–0020–E is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0093.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because abnormal operation of the components of the ENG START panel or ECP due to liquid spillage in the system could result in dual-engine IFSD, possibly resulting in a forced landing with consequent damage to the airplane and injury to occupants. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0093; Product Identifier 2020–NM–026–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

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

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$1,105

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–03–12 Airbus SAS: Amendment 39–19837; Docket No. FAA–2020–0093; Product Identifier 2020–NM–026–AD.

(a) Effective Date

This AD becomes effective February 14, 2020.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 76, Engine controls.

(e) Reason

This AD was prompted by two reports of abnormal operation of the components of the ENG START panel or ECP due to liquid spillage in the system, and the subsequent uncommanded engine inflight shutdown (IFSD) of one engine in each case. The FAA is issuing this AD to address the potential for dual-engine IFSD, possibly resulting in a forced landing with consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0020–E, dated February 5, 2020, corrected February 6, 2020 (''EASA AD 2020–0020–E'').

(h) Exceptions to EASA AD 2020–0020–E

(1) Where EASA AD 2020–0020–E refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0020–E does not apply to this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by this AD, if those actions were performed before the effective date of this AD using EASA AD 2020–0020–E, dated February 5, 2020.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2020–0020–E that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0020–E, dated February 5, 2020, corrected February 6, 2020.

(ii) [Reserved]

(3) For information about EASA AD 2020–0020–E, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0093.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 7, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02852 Filed 2–10–20; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0670; Product Identifier 2019–NM–104–AD; Amendment 39–19830; AD 2020–02–16]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the lower skin of the fuselage skin lap splices along the lower fastener row of a certain stringer lap splice on certain body station skin panels may be subject to widespread fatigue damage (WFD). This AD requires inspections of the lower skin of the fuselage skin lap splices along the lower fastener row of a certain stringer lap splice on certain body station skin panels and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 18, 2020.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of March 18, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0670.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0670; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Guo, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5357; fax: 562–627–5210; email: *james.guo@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on September 4, 2019 (84 FR 46496). The NPRM was prompted by a report that an operator of a Model 737–300 airplane discovered a crack in the skin at a chem-milled step at body station (STA) 727B+10, just above stringer (S)–14R. The airplane had accumulated 88,805 flight hours and 65,804 flight cycles at the time the crack was found. Upon further inspection in the local area using high frequency eddy current (HFEC) hole probe inspection, multiple fastener hole cracks were found in the S–14 lap splice lower row in the lower skin between STA 727A and STA 727E. The lower skin at S–14 is structure that may be susceptible to WFD and may also have scratches that can propagate into cracks. The scratch cracks may interact with fatigue cracking. The NPRM proposed to require inspections of the lower skin of the fuselage skin lap splices along the lower fastener row of a certain stringer lap splice on certain body station skin panels and applicable on-condition actions.

The FAA is issuing this AD to address scratch cracks and fatigue cracking, which may interact and could result in rapid decompression and loss of structural integrity of the airplane.

Comments

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

Support for the NPRM

Priscilla Suarez expressed support for the NPRM, as well as support for additional safety inspections, and stricter regulations that increase safety.

Effect of Winglets on Accomplishment of the Proposed Actions

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

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

Request To Specify That the Airplane May Be Subject to the Unsafe Condition

Boeing requested that the FAA revise the SUMMARY, Discussion section, and paragraph (e) in the regulatory text of the NPRM to specify that the lap splice on certain body station skin panels may be subject to widespread fatigue damage WFD. Boeing pointed out that the change would maintain consistency with the wording used in the service information. Boeing also mentioned that WFD has not been specifically demonstrated in the subject areas.

The FAA agrees for the reasons provided and has revised this AD accordingly.

Request To Revise the Unsafe Condition

Boeing requested that the FAA revise the unsafe condition statement throughout the NPRM to specify only that it could result in rapid decompression, and remove ''. . . *or* loss of structural integrity of the airplane,'' as an additional consequent result. Boeing pointed out that the change would maintain consistency with the wording in the service information.

The FAA partially agrees. The FAA agrees that the wording of the unsafe condition could be confusing and that clarification is necessary. Therefore, the FAA has changed the unsafe condition statement to specify that this AD addresses ''. . . scratch cracks and fatigue cracking, which may interact and could result in rapid decompression *and* loss of structural integrity of the airplane.''

Request To Remove Language Regarding Fatigue Damage

Boeing requested that the FAA remove language regarding fatigue damage and multiple-site damage (MSD) from the Discussion section of the NPRM. Boeing stated that the information is confusing, provides no additional understanding of the issues, and that other AD's related to lap splice scratch cracking and MSD do not include the same information. Boeing argued that the remaining portions of the discussion are sufficient with the intent of the NPRM.

The FAA does not agree, because the language identified by Boeing is not carried forward into the final rule. The FAA acknowledges that the language regarding fatigue damage and MSD is not present in all ADs related to lap splice cracking; however, this specific language is present in other ADs that are related to MSD. This wording helps define the terms, provides general explanation of the issue, and has not been demonstrated as confusing. The FAA has not changed this AD in this regard.

Request for Clarification of the Terminating Action

Boeing requested that the FAA revise paragraph (i) of the proposed AD to clarify if the proposed terminating action is applicable to ''the corresponding locations'' or ''the inspections'' in the corresponding locations. Boeing pointed out that rearranging the statement would make it grammatically clear whether actions or

locations are being terminated. Otherwise, Boeing pointed out that the statement could be misread to interpret it to mean terminating the locations required by the NPRM.

The FAA agrees for the reasons provided and has revised paragraph (i) of this AD accordingly.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

The FAA has reviewed Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019. This service information describes procedures for detailed inspections for previous repairs, and repetitive dual frequency eddy current (DFEC) inspections for cracks of the lower skin of the fuselage skin lap splices along the lower fastener row of the S–14 lap splice at specified locations on the STA 727 to STA 908 skin panel in areas not inspected as specified in other service bulletins, and applicable on-condition actions. On-condition actions include open hole HFEC inspections for cracks, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 158 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
DFEC Inspections of S–14 Lap Splices.	18 work-hours × $85 per hour = $1,530 per inspection cycle.	$0	$1,530 per inspection cycle ...	$241,740 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition inspections that would be required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
97 work-hours × $85 per hour = $8,245	$0	$8,245

The FAA has received no definitive data that would enable us to provide cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–02–16 The Boeing Company: Amendment 39–19830; Docket No. FAA–2019–0670; Product Identifier 2019–NM–104–AD.

(a) Effective Date

This AD is effective March 18, 2020.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the lower skin of the fuselage skin lap splices along the lower fastener row of the stringer (S)–14 lap splice on certain body station skin panels may be subject to widespread fatigue damage (WFD). The FAA is issuing this AD to address scratch cracks and fatigue cracking, which may interact and could result in rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1382, dated May 6, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1382 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Terminating Action for the Required Inspections

Accomplishment of certain skin panel replacements identified as terminating action in Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019, terminates the inspections required by this AD, in the corresponding locations.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

(1) For more information about this AD, contact James Guo, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5357; fax: 562–627–5210; email: *james.guo@faa.gov.*

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–53A1382 RB, dated May 6, 2019.

(ii) [Reserved]

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

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on January 27, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02719 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9073; Product Identifier 2015–NM–062–AD; Amendment 39–19836; AD 2020–03–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 707 airplanes and Model 720 and 720B series airplanes. This AD was prompted by the FAA's analysis of the Model 707 and 720 fuel system reviews conducted by the manufacturer. This AD requires modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 18, 2020.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9073; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3557; email: *Jon.Regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Boeing Model 707 airplanes and Model 720 and 720B series airplanes. The NPRM published in the **Federal Register** on September 23, 2016 (81 FR 65577). The NPRM was prompted by the FAA's analysis of the Model 707 and 720 fuel system reviews conducted by the manufacturer. The NPRM proposed to require modifying the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions.

The FAA is issuing this AD to address ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Comments

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

Request To Withdraw NPRM: No Unsafe Condition

Boeing requested that the FAA withdraw the NPRM. Boeing reported that its safety analysis indicated that the FQIS on the Model 707/720 airplane does not have an unsafe condition. Boeing noted that three fuel-tank safety-related actions, including changes to the lightning shielding of the FQIS wires in the wing leading edge area, are required by AD 2007–23–12, Amendment 39–15258 (72 FR 63800, November 13, 2007; corrected January 10, 2008 (73 FR 1816)) (''AD 2007–23–12''). Boeing pointed out that AD 2007–23–12 requires operators to perform a survey of the fuel system wiring configurations on its airplanes. (That AD also requires operators to report the results of the surveys and discrepancies found.) Boeing stated that no operator has reported any discrepancy, and no operator has requested service information to support any changes related to fuel tank safety.

The FAA disagrees with the commenter's request. Boeing did not provide specific details about the type of assessment that was performed (total fleet risk, average risk per flight hour, peak individual flight risk, *etc.*). Based on Boeing's fuel system safety assessment submitted in response to Special Federal Aviation Regulation No. 88 (''SFAR 88'') of 14 CFR part 21, the FAA has determined that there is an unsafe condition due to the potential for a fuel tank ignition source to occur from the FQIS due to its design architecture, component design details, and installation design details. The FAA's determination was made in accordance with the guidance contained in FAA Policy Memorandum ANM100–2003–112–15, ''SFAR 88-Mandatory Action Decision Criteria,'' dated February 25, 2003.[1] Under that policy, an ignition source that can occur in a high-flammability fuel tank, due to a combination of a preexisting failure that can exist undetected for multiple flights and one additional failure, is an unsafe condition requiring corrective action. High-flammability fuel tanks are defined in the policy as fuel tanks with a fleet average flammability greater than 7 percent as calculated in accordance with 14 CFR Appendix N to part 25. At the time of the unsafe condition determination in April 2003, Boeing acknowledged that the Model 707/720 center fuel tank was a high-flammability fuel tank. The Boeing SFAR 88 report for the Model 707/720 showed that a combination of an in-tank wire fault or contamination condition (which can remain latent for multiple flights) and a hot short outside of the tank between the affected FQIS tank circuit and other aircraft power wiring cobundled with FQIS tank circuit wiring could result in an ignition source in the fuel tank. That combination of failures was classified by the FAA as a ''known combination of failures'' under the criteria in the policy memorandum due to the similarity of the Model 707/720 FQIS system architecture and design details to those of the Boeing Model 747 airplane involved in the TWA Flight 800 catastrophic fuel tank explosion accident in 1996. The National Transportation Safety Board (NTSB) concluded that an FQIS failure combination as described above was the most likely cause of that accident.[2] The addition of lightning shields required by AD 2007–23–12 is unrelated to the unsafe condition that prompted this AD, and was instead driven by a concern that a critical lightning strike could cause an ignition source in the tank via FQIS wiring. The FAA has therefore determined that it is necessary to issue this final rule as proposed.

Request To Withdraw NPRM: No Passenger Airplanes Affected

Boeing requested that the FAA withdraw the NPRM because none of the four affected U.S.-registered airplanes are passenger airplanes, and the world fleet size and fleet operational exposure for these airplanes continue to decline with time. Boeing stated that its safety assessment, using methodologies ''recognized by the FAA,'' shows that the vulnerability of the Model 707/720 FQIS to a latent failure plus a single failure does not present an unsafe condition. Boeing concluded that requiring the proposed actions will not promote air safety and instead will add unnecessary cost to operators.

The FAA disagrees with the commenter's request. The FAA has not limited its actions related to fuel tank safety to passenger airplanes. The FAA has determined that an unsafe condition exists using the decision criteria in FAA Policy Memorandum PS–ANMl00–2003–112–15. The FAA assumes that in citing assessment methodologies recognized by the FAA, Boeing is referring to having performed an assessment of the total fleet risk for the Model 707/720 fleet that showed a very low likelihood of a fuel tank ignition event in the remaining life of that fleet. However the FAA's unsafe condition determination was calculated using the decision criteria in FAA Policy Memorandum ANMl00–2003–112–15. This determination was not driven by a fleet risk assessment. A latent in-tank failure that provides a conductive path or reduces dielectric strength of the tank wiring or components, combined with an external wiring system failure that conducts power onto the tank wiring, could create an ignition source in the fuel tank. That combination of failures was classified as a ''known combination of failures'' under the criteria in the policy memo due to the similarity of the Model 707/720 FQIS system architecture and design details to those of the Model 747 airplane involved in the catastrophic fuel tank explosion. The NTSB concluded that an FQIS failure combination as described above was the most likely cause of that accident. The FAA therefore considers it necessary to address this unsafe condition. The per-airplane cost is expected to be similar to the cost of the actions required for Model 737 and 747 airplanes in AD 99–03–04, Amendment

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf.*

[2] NTSB Aviation Accident Report AAR–00–03 *https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR0003.pdf.*

39–11018 (64 FR 4959, February 2, 1999) (''AD 99–03–04''); and AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998) (''AD 98–20–40''). Therefore, the FAA has made no changes to this final rule as a result of this comment.

Request To Withdraw NPRM: Extremely Remote Likelihood of Unsafe Condition

Boeing requested that the FAA withdraw the NPRM. Boeing considered the likelihood of an undetected latent electrical fault condition of the FQIS to be extremely remote, due to the FQIS architecture. Boeing added that the existing Model 707/720 FQIS design uses a three-wire system that goes directly from the fuel tank to the flight deck indication. Boeing stated that an electrical fault of an in-tank component causes the FQIS to provide a fault indication to the flight crew, so the failure is not latent.

The FAA disagrees with the commenter's request. The agency contacted Boeing to resolve the apparent conflict between this comment and the company's previously submitted SFAR 88 reports. In the SFAR 88 reports for Model 707/720 airplanes, Boeing stated that a latent in-tank failure condition could not be claimed to be extremely remote, and acknowledged that the system does not comply with the requirements of 14 CFR 25.981(a)(3) related to a latent failure plus a single failure. (Extremely remote qualitatively means that the condition would occur no more than a few times in the total fleet life. In numerical probability analysis, a condition that has a probability on the order of 1 in 10 million flight hours or less is considered extremely remote.) However, the comment that Boeing submitted to the NPRM stated that a latent in-tank failure was extremely remote.

A meeting with representatives from the FAA and Boeing was held February 15, 2019, to clarify Boeing's position. (A record of that meeting has been posted to the AD docket.) Boeing explained that it had intended to convey in its comment that the estimated probability for the initial failure that creates a latent in-tank loss of dielectric strength, resistive current path, or short condition is extremely remote. Boeing acknowledged that when the estimated probability of that failure initiation is multiplied by the average latency period, the probability of a latent in-tank failure existing in any given flight hour is not extremely remote.

Given this clarification, Boeing's comment was consistent with the conclusions of its SFAR 88 reviews. The FQIS does not provide a fault indication to the flight crew other than unusual readings or a zero reading provided by a tank gage if a hard short to ground or power occurs. In addition, even if such a fault is noted by the flight crew, the approved Master Minimum Equipment List for the Model 707/720 airplane allows operators to fly for up to ten days in that condition, without disconnecting the FQIS for the affected tank, with provisions for extending beyond the ten days. The FAA therefore does not agree that a latent failure of in-tank wiring or components, such that an ignition source could occur if an external hot short occurs, is extremely remote. Therefore, the FAA has made no changes to this final rule as a result of this comment.

Request To Revise Cost Estimate

Boeing requested that if the NPRM is not withdrawn, the FAA revise the cost estimate to reflect the cost of developing a design solution for the center wing tank FQIS. Boeing expected that a small number of airplanes would actually be modified, so the cost of developing a design solution would be spread over a small number of airplanes, resulting in a significant per-airplane cost. Boeing did not provide any specific cost information or describe the actual modifications for which they provided cost comments.

The FAA disagrees with the commenter's request to revise the cost estimate. The FAA based the cost estimate for Model 707/720 passenger airplanes on the inflation-adjusted estimated costs for installation of transient suppression devices on the Model 747 airplane as required by AD 98–20–40. The FAA considers that the transient suppression design solutions, if not the actual parts, developed for Model 737 and 747 airplanes in response to AD 99–03–04 and AD 98–20–40 will be applicable to the Model 707/720 airplane due to the similarity of those models' FQIS designs. The FAA agrees that the nonrecurring design development costs associated with any necessary model-specific design activity will be spread over fewer airplanes, resulting in higher per-airplane costs. However, the FAA increased the cost estimate in the NPRM to reflect that increased cost to the existing fleet. Boeing did not propose any specific alternative cost figures to be substituted for the FAA estimate. The one affected U.S. passenger airplane in operation at the time the NPRM was published has been removed from service. The remaining U.S. airplanes are an experimental research airplane and privately owned military contract aerial refuelers. For those airplanes, the operators have the potential to use the Alternative Methods of Compliance (AMOC) approval process to propose alternative approaches to address the unsafe condition using operational or utilization restrictions. The FAA has made no changes to this final rule as a result of this comment.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Costs of Compliance

The FAA estimates that this AD affects three airplanes of U.S. registry: two cargo/tanker airplanes and one experimental airplane. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	600 work-hours × $85 per hour = $51,000	$150,000	$201,000	$603,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–03–11 The Boeing Company: Amendment 39–19836; Docket No. FAA–2016–9073; Product Identifier 2015–NM–062–AD.

(a) Effective Date

This AD is effective March 18, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 707–100 long body, –200, –100B long body, –100B short body, –300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category; excluding airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the Fuel Tank Flammability Reduction (FTFR) requirements of 14 CFR 25.981(b) or 14 CFR 26.33(c)(1).

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by the FAA's analysis of the Model 707/720 fuel system reviews conducted by the manufacturer. The FAA is issuing this AD to address ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification

Within 60 months after the effective date of this AD, modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions, using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

(i) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3557; email: *Jon.Regimbal@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on February 3, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02667 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0109; Airspace Docket No. 19–ASO–2]

RIN 2120–AA66

Amendment of the Class D and Class E Airspace, Establishment of Class E Airspace, and Revocation of Class E Airspace; Louisville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace and Class E surface airspace at Bowman Field, Louisville, KY; establishes Class E surface airspace designated as an extension to a Class C surface area at Louisville Muhammad Ali International Airport, Louisville, KY; revokes the Class E airspace designated as an extension to a Class D or Class E surface area at Bowman Field Airport; and modifies the Class E airspace extending upward from 700 feet above the surface at Louisville Muhammad Ali International Airport and Bowman Field Airport. This action is due to an airspace review caused by the decommissioning of the Bowman VHF omnidirectional range (VOR), which provided navigation information to the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The name of the Louisville Muhammad Ali International Airport is also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class D airspace and Class E surface airspace at Bowman Field, Louisville, KY; establishes Class E surface airspace designated as an extension to a Class C surface area at Louisville Muhammad Ali International Airport, Louisville, KY; revokes the Class E airspace designated as an extension to a Class D or Class E surface area at Bowman Field Airport; and modifies the Class E airspace extending upward from 700 feet above the surface at Louisville Muhammad Ali International Airport and Bowman Field Airport to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 35044; July 22, 2019) for Docket No. FAA–2019–0109 to amend the Class D airspace and Class E surface airspace at Bowman Field, Louisville, KY; establish Class E surface airspace designated as an extension to a Class C surface area at Louisville Muhammad Ali International Airport, Louisville, KY; revoke the Class E airspace designated as an extension to a Class D or Class E surface area at Bowman Field Airport; and amend Class E airspace extending upward from 700 feet above the surface at Louisville Muhammad Ali International Airport and Bowman Field Airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA discovered an error in the proposed amendment of the Class E airspace extending upward form 700 feet above the surface at Louisville Muhammad Ali International Airport, Louisville, KY. The extension ''. . . and within 2.4 miles each side of the ILS localizer east course, extending from the 10-mile radius to 7 miles east of the LOM . . .'' should have been removed in the proposed action and from the airspace legal description as it is no longer needed. Those errors are corrected in this action.

Class D and E airspace designations are published in paragraph 5000, 6002, 6003, 6004, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class D airspace to within a 4-mile radius (increased from a 3.9-mile radius) of Bowman Field Airport, Louisville, KY; and updating the name of the Louisville Muhammad Ali International Airport (previously Louisville International Airport), Louisville, KY, to coincide with the FAA's aeronautical database;

Amending the Class E surface airspace to within a 4-mile radius (increased from a 3.9-mile radius) of Bowman Field Airport to 2,200 feet MSL; adding an exclusion area above 2,200 MSL; and updating the name of the Louisville Muhammad Ali International Airport (previously Louisville International Airport) to coincide with the FAA's aeronautical database;

Establishing Class E surface airspace designated as an extension to a Class C surface area at Louisville Muhammad Ali International Airport extending within 1 mile each side of the 165° bearing of the Louisville Muhammad Ali International: RWY 35R–LOC extending from the 5-mile radius of Louisville Muhammad Ali International Airport to 5.5 miles south of the Louisville Muhammad Ali International: RWY 35R–LOC; and within 1 mile each side of the 165° bearing of the Louisville Muhammad Ali International: RWY 35L–LOC extending from the 5-mile radius of Louisville Muhammad Ali International Airport to 5.5 miles south of the Louisville Muhammad Ali International: RWY 35L–LOC; and within 1 mile each side of the 165° bearing of the Louisville Muhammad Ali International Airport extending from the 5-mile radius of Louisville Muhammad Ali International Airport to 5.5 miles south of the Louisville Muhammad Ali International Airport;

Removing the Class E airspace designated as an extension to Class D and Class E surface area at Bowman Field Airport, as it is no longer required;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 7.5-mile radius (decreased from a 10-mile radius) of Louisville Muhammad Ali International Airport; removing the extension to the east of the LOM as it is no longer needed; within a 6.5-mile radius (decreased from a 10-mile radius) of Bowman Field Airport; and updating the name of Louisville Muhammad Ali International Airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Bowman VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

FAA Order 7400.11, Airspace Designations and Reporting Points, is

published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO KY D Louisville, KY [Amended]

Bowman Field Airport, KY
(Lat. 38°13′41″ N, long. 85°39′49″ W)
Louisville Muhammad Ali International Airport, KY
(Lat. 38°10′27″ N, long. 85°44′11″ W)

That airspace extending upward from the surface to but not including 2,200 feet MSL within a 4-mile radius of Bowman Field Airport, excluding that portion within the Louisville Muhammad Ali International Airport Class C airspace area, and excluding that portion south of the 081° bearing from Louisville Muhammad Ali International Airport, and also excluding that portion north of the Louisville Muhammad Ali International Airport Class C airspace area and west of a line drawn from lat. 38°11′28″ N, long. 85°42′01″ W direct thru the point where the 030° bearing from Louisville Muhammad Ali International Airport intersects the 5-mile radius from Louisville Muhammad Ali International Airport to the point of intersection with the 4-mile radius from Bowman Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ASO KY E2 Louisville, KY [Amended]

Bowman Field Airport, KY
(Lat. 38°13′41″ N, long. 85°39′49″ W)
Louisville Muhammad Ali International Airport, KY
(Lat. 38°10′27″ N, long. 85°44′11″ W)

That airspace extending upward from the surface to but not including 2,200 feet MSL within a 4-mile radius of Bowman Field Airport, excluding that portion within the Louisville Muhammad Ali International Airport Class C airspace area, and excluding that portion south of the 081° bearing from Louisville Muhammad Ali International Airport, and also excluding that portion north of the Louisville Muhammad Ali International Airport Class C airspace area and west of a line drawn from lat. 38°11′28″ N, long. 85°42′01″ W direct thru the point where the 030° bearing from Louisville Muhammad Ali International Airport intersects the 5-mile radius from Louisville Muhammad Ali International Airport to the point of intersection with the 4-mile radius from Bowman Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6003 Class E Airspace Areas Designated as an Extension to a Class C Surface Area.

* * * * *

ASO KY E3 Louisville, KY [Established]

Louisville Muhammad Ali International Airport, KY
(Lat. 38°10′27″ N, long. 85°44′11″ W)
Louisville Muhammad Ali International: RWY 35R–LOC
(Lat. 38°11′21″ N, long. 85°43′55″ W)
Louisville Muhammad Ali International: RWY 35L–LOC
(Lat. 38°11′17″ N, long. 85°44′57″ W)

That airspace extending upward from the surface within 1 mile each side of the 165° bearing from the Louisville Muhammad Ali International: RWY 35R–LOC extending from the 5-mile radius of the Louisville Muhammad Ali International Airport to 5.5 miles south of the Louisville Muhammad Ali International: RWY 35R–LOC, and within 1 mile each side of the 165° bearing from the Louisville Muhammad Ali International: RWY 35L–LOC extending from the 5-mile radius of the Louisville Muhammad Ali International Airport to 5.5 miles south of the Louisville Muhammad Ali International: RWY 35L–LOC, and within 1 mile each side of the 165° bearing from the Louisville Muhammad Ali International Airport extending from the 5-mile radius of the Louisville Muhammad Ali International Airport to 5.5 miles south of the Louisville Muhammad Ali International Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ASO KY E4 Louisville Bowman Field, KY [Removed]

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

* * * * *

ASO KY E5 Louisville, KY [Amended]

Louisville Muhammad Ali International Airport, KY
(Lat. 38°10′27″ N, long. 85°44′11″ W)
Bowman Field Airport, KY
(Lat. 38°13′41″ N, long. 85°39′49″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Louisville Muhammad Ali International Airport, and within a 6.5-mile radius of Bowman Field Airport.

Issued in Fort Worth, Texas, on February 5, 2020.

Marty Skinner,

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

[FR Doc. 2020–02743 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[CDC Docket No. CDC–2020–0013]

RIN 0920–AA75

Control of Communicable Diseases; Foreign Quarantine

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Interim final rule with request for comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) is issuing this interim final rule to amend its Foreign Quarantine regulations, to enable CDC to require airlines to collect, and provide to CDC, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions.

DATES:

Effective date: This interim final rule is effective on February 7, 2020.

Comment date: Written comments are invited and must be submitted on or before March 13, 2020.

Expiration date: Unless extended after consideration of submitted comments, this interim final rule will cease to be in effect on the earlier of (1) the date that is two incubation periods after the last known case of 2019–nCoV, or (2) when the Secretary determines there is no longer a need for this interim final rule. The Secretary will publish a document in the **Federal Register** announcing the expiration date.

ADDRESSES: Written comments may be submitted to the Department of Health and Human Services as specified below. Any comment that is submitted will be made available to the public. Comments must be identified by RIN 0920–AA75. Because of staff and resource limitations, comments must be submitted electronically to *www.regulations.gov.* Follow the ''Submit a comment'' instructions.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received, as they are public records. Comments may be submitted anonymously.

Comments: You may submit electronic comments on this interim final rule to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. Before or after the close of the comment period, CDC will post all comments that were received before the end of the comment period on *www.regulations.gov.* Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Christopher De La Motte Hurst, Health Scientist, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329; Telephone: 404–498–1600; Email: *dgmqpolicy@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Current Outbreak of 2019–nCoV

On December 31, 2019, the People's Republic of China (China) notified the World Health Organization (WHO) of pneumonia cases of an unknown cause in Wuhan, China. The United States now has confirmed cases of individuals who have this severe acute respiratory illness caused by a novel (new) coronavirus (''2019–nCoV'') (''the virus'') first detected in Wuhan, Hubei Province, China. On January 30, 2019, the World Health Organization (WHO) declared the outbreak of the 2019–nCoV virus in China a Public Health Emergency of International Concern.[1] WHO indicated that it is expected that further international exportation of cases may appear in any country, and that countries should place particular emphasis on reducing human infection, prevention of secondary transmission, and international spread of the disease. As of February 1, 2020, Chinese health officials have reported approximately 11,953 confirmed cases of infections with 2019–nCoV in China, with an additional 15,238 suspected cases.[2] China now has more confirmed cases of 2019–nCOV than it had of severe acute respiratory syndrome (''SARS'') in 2002–2003. As of February 1, 2020, the virus has killed at least 259 people, all in China.

Outside of China, there are approximately 164 confirmed cases as of February 1, 2020. In one day, the total number of confirmed cases around the world rose from 9,707 to 11,953—an increase of nearly 20 percent. The virus was discovered in China in December 2019. There are now reports of infected people in 28 countries, including those who have not visited China. Those individuals are in Germany, Japan, Taiwan, and Vietnam, among other countries. As of February 1, 2020, there were 8 confirmed cases in the United States.

The 2019–nCoV

Coronaviruses are a large family of viruses. Some cause illness in people and others circulate among animals, including camels, cats, and bats. Animal coronaviruses are capable of evolving and infecting people and then spreading between people, as occurred with Middle East respiratory syndrome (MERS) and SARS.

Coronaviruses can cause illnesses ranging in severity from mild upper respiratory symptoms, similar to the common cold, to severe illnesses, such as those caused by SARS and MERS. Signs and symptoms of 2019–nCoV include fever, cough, and difficulty breathing. The virus has the potential to cause severe illness and death—with persons that have underlying health conditions possibly at higher risk. However, many with the virus experience mild symptoms. U.S. and international health officials are continuing to study the virus to determine its characteristics, including its transmissibility and fatality rate, and to develop diagnostic tests, vaccines, and therapeutics.

Outbreaks of novel virus infections among people are always of public health concern. Older adults and people with underlying health conditions may be at increased risk.

As noted, public health experts are still in the process of studying the virus, including the severity of the virus. The cases that have been identified skew to the severe, including patients who are older or have other illnesses. Experts are working to understand the incubation period. The incubation period for coronaviruses varies; known coronaviruses have incubation periods ranging anywhere from 2 to 14 days. But that period could be higher or lower for this virus. China and Germany have

[1] Under the International Health Regulations, a public health emergency of international concern is ''an extraordinary event'' that constitutes a ''public health risk to other States through international spread of disease and to potentially require a coordinated international response.''

[2] Suspected cases as of January 31, 2020.

reported that there may be evidence of asymptomatic transmission.

Travel Restrictions

In light of the rapid spread of the virus, Chinese authorities have imposed strict travel restrictions in the area around Wuhan. China has taken unprecedented steps to help control the virus. Currently, there are at least 16 cities in China that are under travel restrictions and 26 of China's provincial-level jurisdictions are on high health alert. Beijing city government has suspended all inter-province bus service.

But these precautions have not stopped the virus from spreading to areas of China outside of Hubei Province, as well as to other countries. As many as 5 million individuals are reported to have left Wuhan prior to the imposition of intra-China travel restrictions. Neighboring countries have taken swift action to protect their citizens by restricting travel between their countries and China.

On January 29, President Trump designated the Secretary of Health and Human Services to lead an interagency task force on the novel coronavirus. On January 30, 2020, the U.S. Department of State issued a ''Level 4: Do Not Travel'' travel advisory for China, its highest level of caution over the rapidly spreading virus. Other countries have taken additional measures, including prohibiting foreign nationals traveling from China from entering or transiting their borders and quarantining citizens returning from China. Such sustained human-to-human viral transmission in the United States could have cascading public health, economic, and societal consequences.

While the risk of infection for Americans remained low, on January 31, 2020, the Secretary determined that, as of January 27, 2020, a public health emergency has existed in the United States as a result of confirmed cases of 2019–nCoV under section 319 of the Public Health Service Act. As part of the public health response, the President authorized temporary measures to increase the U.S. government's ability to detect and contain 2019–nCoV beginning at 5:00 p.m. EST on Sunday, February 2, 2020. Amongst these measures, U.S. citizens (and certain classes of aliens) returning to the United States who have been in Hubei Province in the previous 14 days will be subject to up to 14 days of mandatory quarantine to ensure that they received appropriate medical screening—have not contracted the virus and do not pose a public health risk—or receive proper medical care. U.S. citizens (and certain classes of foreign nationals) returning to the United States who have been in the rest of mainland China within the previous 14 days will undergo proactive entry health screening at a select number of ports of entry and up to 14 days of monitoring to ensure they have not contracted the virus and do not pose a public health risk. Pursuant to the President's proclamation, with certain exceptions, the entry of aliens who were physically present within China (excluding the Special Administrative Regions of Hong Kong and Macau) during the 14-day period preceding their entry or attempted entry into the United States has been temporarily suspended.

The CDC is closely monitoring the situation in the United States for person-to-person transmissions in the United States, is conducting enhanced entry screening at the U.S airports where travelers from China are arriving, and is enhancing its general illness response capacity at the 20 ports of entry where CDC quarantine stations are located. CDC is also supporting States in conducting contact investigations of confirmed 2019–nCoV cases identified in the United States. As of January 31, 2020, there has been at least one case of person-to-person transmission in the United States.

During Fiscal Year 2019, an average of more than 14,000 people traveled to the United States from China each day, via both direct and indirect flights. With such numbers, it would put a severe strain on the CDC to require it to both actively monitor all of these travelers and actively contain and arrange care for individuals at risk in the United States. This continues to be the case, even with the temporary travel restrictions, given the scope of the public health response in which CDC is engaged. The virus has spread to 28 countries, including Germany, Japan, Taiwan, and Vietnam, among other countries, and as of February 1, 2020, there were 8 confirmed cases in the United States.

II. Newly Required Data Reporting

By this interim final rule, CDC requires airlines to collect, and within 24 hours of an order by the Director of CDC, submit to CDC certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions.

Need for Contact Data for Public Health Follow-Up

Among the fundamental components of the public health response to the report of a person with a communicable disease is the identification and evaluation of those who may have been exposed. Thus, in order to control the introduction, transmission, and spread of communicable diseases into the United States, such as 2019–nCoV, CDC must be able to identify and locate persons arriving in the United States from a foreign country who may have been exposed to a communicable disease abroad. Another fundamental component of a public health response is identifying and contacting those individuals who may have come in contact with a person with a communicable disease and who may be at risk of contracting the disease as a result of their interactions with such affected persons. The identification and notification of those exposed is an essential first step in providing the exposed access to potentially life-saving medical screening, follow-up, disease prevention measures, including vaccination and other preventive treatments, and medical treatment and supportive care. Preventing secondary cases among contacts, in turn, helps prevent the propagation and spread of disease within the community. Therefore, travelers and the public at large derive direct benefit from a system that ensures that, if an exposure has occurred, health authorities can identify, locate, and notify affected passengers and those individuals who came into contact with them within the incubation period of the disease. Contact tracing is effective at reducing cases of communicable disease at the early stages of a potential outbreak if the contacts are notified as soon after initial exposure as possible. If an efficient contact system is not in place when the first ill passengers arrive, the benefits of the contact tracing are greatly diminished.

CDC, in partnership with State, local, and international public health partners, frequently conducts contact investigations for diseases such as tuberculosis, measles, meningitis, rubella, and viral hemorrhagic fevers. The delays experienced by CDC in collecting, analyzing, processing, and sending information related to ill and exposed travelers to State and local partners have at times been significant, sometimes over several days. Such delays may prevent CDC and State and local partners from providing timely public health interventions designed to educate travelers and prevent additional

transmission. This interim final rule will enable CDC to receive the most useful forms of data in a more timely manner and enable it to more effectively provide critical public health services.

Based on CDC's experience, in order to conduct effective contact tracing of individuals who may be arriving in the United States from abroad, it is critical to have the person's full name, address in the U.S., one or two phone numbers, and email address. In the past, CDC has reviewed the effectiveness of different means of contacting a person. If public health authorities had a valid phone number, the contact rate is between 91 and 100 percent. With only the address, the contact rate plummets to 44 percent. With only the name—currently, a common situation—the contact rate is only eight percent. HHS and CDC have found that a phone number will allow rapid contact with an individual and can substantially improve the public health response to an outbreak. Two phone numbers increase the chance of contacting an individual, even when he or she is traveling. HHS and CDC believe that collecting email addresses will further increase the chance of contacting a person when he or she is traveling. Moreover, especially in an outbreak where CDC and its public health partners will need to conduct a significant amount of contact tracing as quickly as possible, it is critical for CDC to receive the information in a usable electronic form, so that it is easy to process, analyze, and, as necessary, transmit to its public health partners at the State and local levels of government.

By this interim final rule, CDC requires airlines to collect and submit via electronic means to CDC, beginning within 24 hours of an order from the Director, certain data regarding passengers and crew arriving on flights arriving in the United States from foreign countries. CDC believes that this is the only mechanism by which it can efficiently obtain the information it needs for a public health response to outbreaks of communicable disease and that current regulatory requirements are not sufficient, especially in public health emergencies. CDC will exercise enforcement discretion where appropriate. We note that implementation of this interim final rule will entail technical and logistical difficulties for airlines. We are confident that all airlines will make every effort to comply with it. CDC, and the Department of Health and Human Services (HHS) more broadly, will in the exercise of its enforcement discretion take into account the good faith attempts at compliance of any airline which may have difficulty in implementing the interim final rule in a timely fashion.

Currently, 42 CFR 71.20 permits the Director to require individuals to provide contact information as part of public health prevention measures. However, while 42 CFR 71.20 provides the Department with what in many instances are useful authorities, it is not in all cases adequate to address public health emergencies: It would require collection of the information from a large number of individuals, and it does not require a format. Hence, the information may be effectively unusable—thousands of pages of paper documents in non-standardized formats. Thus, it would be inefficient and cumbersome to obtain, organize, review, and appropriately disseminate such information from thousands of individuals, particularly during a public health emergency when time is of the essence. It is more efficient to collect such information from airline carriers, whose numbers are more limited. Moreover, while it might be theoretically possible to collect contact information directly from airline passengers, such a collection—unless conducted at all times for all passengers—would inevitably mean that CDC would not have information to conduct contact tracing and public health follow-ups for those individuals who were on flights at the beginning of or before an outbreak.

In an outbreak, paper records (such as those collected during public health screening programs at ports of entry) and paper customs declarations are inadequate for contact tracing or public health follow-ups. Moreover, customs declarations are not being collected and stored consistently for all travelers at this time, and in some airports they are not required for U.S. travelers. As it is impossible to predict outbreaks, and given that the information from the earliest affected flights would be critical, the ability to obtain information that is continuously collected in an electronic format is extremely useful for responding to the ever-changing disease threat.

CDC's current regulations at 42 CFR 71.4, relating to the transmission of airline passenger, crew, and flight information for public health purposes, specify that airlines ''must provide certain information to CDC to the extent that *such data are already available and maintained* [. . .].'' 42 CFR 71.4(a) (emphasis added).[3] However, such data are not always ''already available and maintained.'' Accordingly, even with the current requirements, CDC sometimes receives information that is not timely, complete, or accurate. The Department of Homeland Security has attempted to help CDC fill the gaps in these data in order to try and make contact with exposed travelers in a timely manner. However, even with this assistance, gaps can still remain and acquiring contact information for large numbers of incoming travelers, as needed during the current response to 2019–nCoV, can rapidly become impracticable.

Under this interim final rule, CDC envisions that information will be provided by carriers and shared with CDC using the procedures currently in effect with respect to data that is provided to CDC pursuant to 42 CFR 71.4. Specifically, DHS will assist HHS in facilitating the transmission of the requested information using the existing data-sharing infrastructure in place between HHS and DHS. These infrastructures already have operationalized safeguards for data privacy and security. And CDC will hold any received data under current protocols for data privacy and security for information obtained under 42 CFR 71.4(a) and (b).

Provisions of the Interim Final Rule

Given the limitations associated with the current regulatory requirements, CDC is exercising its statutory authority to require any airline with a flight arriving into the United States, including any intermediate stops between the flight's origin and final destination, to collect and, within 24 hours of an order by the CDC Director, transmit to CDC the following five data elements with respect to each passenger and crew member who may be at risk of exposure to a communicable disease, to the extent that such information exists for the individual, and in a format acceptable to the Director:

1. Full name;
2. Address while in the United States;
3. Email address;

[3] These data elements are (1) full name (last, first, and, if available, middle or others); (2) date of birth; (3) sex; (4) country of residence; (5) if a passport is required, passport number, passport country of issuance, and passport expiration date; (6) if a travel document other than a passport is required, travel document type, travel document number, travel document country of issuance and travel document expiration date; (7) address while in the United States (number and street, city, State, and zip code), except that U.S. citizens and lawful permanent residents will provide address of permanent residence in the U.S. (number and street, city, State, and zip code); (8) primary contact phone number to include country code; (9) secondary contact phone number to include country code; (10) email address; (11) airline name; (12) flight number; (13) city of departure; (14) departure date and time; (15) city of arrival; (16) arrival date and time; and (17) seat number. 42 CFR 71.4(b).

4. Primary phone number; and
5. Secondary phone number.

These are the pieces of data most useful for CDC and provide the agency and its partners with a capability to provide critical public health services.

In order for CDC to perform its critical public health functions with respect to an outbreak of a communicable disease, the timely provision of information from the airlines is critical. But the airlines currently do not always provide such information in a timely fashion. For routine contact investigations performed during business hours without CDC surge staff, CDC experience suggests that, following a flight, it takes airlines up to seven days to respond to a single request for passenger manifest information currently collected. In addition, there is significant time and labor needed (typically several business days) for CDC to obtain additional information and process the received information into a format suitable for distribution to local health authorities in the U.S. As a result, obtaining contact information after a flight—assuming the information is available and recognizing its limitations—leads to a delay of nearly two weeks before health authorities can make the first contact. Two weeks is ample time for travelers to be lost to follow-up, or become symptomatic or infectious. The time required and costs incurred increase exponentially with multiple requests.

The required collection of this information by the airlines finds strong support in public opinion. While a significant number of air passengers expressed concerns with increased reservation or check-in time, a Harvard School of Public Health study, Project on the Public and Biological Security, found that 94% of air travelers would want public health authorities to contact them if they might have been exposed to a serious contagious disease on an airplane. In addition, 93% of domestic air travelers and 89% of international air travelers expressed a willingness to provide some type of contact information.

HHS and CDC acknowledge that coordination with other agencies reduces duplication, increases passengers' willingness to provide the information, and reduces costs to travel providers. HHS and CDC will work with all relevant departments and agencies to ensure that this process eliminates duplication with other programs and imposes the lowest cost possible on travelers and travel providers. By relying on the existing data collection and collection methods, HHS and CDC have trimmed the additional required passenger information to the minimum needed for an effective public health response. All of the data that this interim final rule requires airlines to collect and submit to CDC are data elements that the airlines are already required to submit to CDC, provided they are ordered to do so, if the data are already available and maintained. HHS and CDC also acknowledge that airlines may not currently collect all of these data and may not keep such data as they do collect in the form in which CDC would prefer to receive it. They also recognize that a certain amount of modification to airlines' information systems will be necessitated by the requirement to collect any data elements that the airlines do not currently collect from all international passengers. During this transition period, CDC anticipates working with airlines on an individual basis to ensure they are capable and able to meet the requirements of this interim final rule.

Although CDC is issuing this interim final rule, CDC continue to work with its partners to explore all avenues to obtain the information needed for a public health response to the outbreak of a communicable disease, such as 2019–nCOV.

III. Statutory Authority

The primary legal authority supporting this rulemaking is section 361 of the Public Health Service Act, 42 U.S.C. 264. Section 361, among other things, authorizes the Secretary of HHS to make and enforce such regulations as in the Secretary's judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or possessions of the United States and from one state or possession into any other state or possession.

Section 361(a), 42 U.S.C. 264(a), states that the Secretary may make and enforce regulations as necessary to prevent the introduction, transmission, and spread of ''communicable diseases'' from foreign countries into the United States or from one state or possession (U.S. territory) into any other state or possession (U.S. territory). By its terms, subsection (a) does not seek to limit the types of communicable diseases for which regulations may be enacted, but rather applies to all communicable diseases that may impact human health. Section 361(a) further authorizes the Secretary to promulgate and enforce a variety of public health regulations to prevent the spread of these communicable diseases, including inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures.

In addition to section 361, HHS believes that the following Public Health Service Act sections are also relevant with respect to this rulemaking: Section 311, 42 U.S.C. 243; section 362, 42 U.S.C. 265; section 365, 42 U.S.C. 268; and section 367, 42 U.S.C. 270. Section 311 authorizes the Secretary to accept state and local assistance in the enforcement of quarantine rules and regulations and to assist states and their political subdivisions in the control of communicable diseases. Section 365 provides that it shall be the duty of customs officers (*e.g.,* U.S. Customs and Border Protection officers) and of U.S. Coast Guard officers to aid in the enforcement of quarantine rules and regulations. Section 367 authorizes the application of certain sections of the Public Health Service Act and promulgated regulations (including penalties and forfeitures for violations of such sections and regulations) to air navigation and aircraft to such extent and upon such conditions as deemed necessary for safeguarding public health.

As prescribed in section 368, 42 U.S.C. 271, and under 18 U.S.C. 3559 and 3571(c), criminal sanctions exist for violating regulations enacted under sections 361 and 362, 42 U.S.C. 264 and 265. 18 U.S.C. 3559 defines an offense (not otherwise classified by letter grade) as a ''Class A misdemeanor'' if the maximum term of imprisonment is ''one year or less but more than six months.'' 18 U.S.C. 3571 provides that individuals found guilty of an offense may be sentenced to a fine. Specifically, an individual may be fined ''not more than the greatest of''—(1) the amount specified in the law setting forth the offense; or (2) for a misdemeanor resulting in death, not more than $250,000; or (3) for a Class A misdemeanor that does not result in death, not more than $100,000. Similarly, an organization found guilty of an offense may be fined ''not more than the greatest of''—(1) the amount specified in the law setting forth the offense; or (2) for a misdemeanor resulting in a death, not more than $500,000; or (3) for a Class A misdemeanor that does not result in death, not more than $200,000. 42 U.S.C. 271 sets forth statutory penalties of up to 1 year in jail and a fine of $1,000. Therefore, it is classified as a Class A misdemeanor under 18 U.S.C. 3559. Because the alternate fines set forth under 18 U.S.C. 3571 are greater than the $1,000 set forth under 42 U.S.C. 271 (which sets a maximum penalty of not more than $1,000 or one

year of jail, or both for violation of quarantine laws), and because 42 U.S.C. 271 does not exempt its lower penalties from 18 U.S.C. 3571(e), the greater penalties of 18 U.S.C. 3571(b)(5) and (c)(5) apply.

IV. Request for Comment

HHS and CDC request comment on all aspects of this interim final rule, including its likely costs and benefits and the impacts that it is likely to have on the public health, as compared to the current requirements under 42 CFR 71.4. They are particularly interested in comments on:

- The extent to which airlines currently collect, with respect to passengers on inbound international flights, the data elements that this interim final rule requires airlines to collect and submit to CDC.
- When reporting is required, the time period within which airlines should be required to report such data, and whether that time period should be measured from the published time of departure or of arrival.
- Whether the Director's authority to require the reporting of the data elements listed in paragraph (e) should be limited to circumstances in which the Secretary has determined, under section 319 of the Public Health Service Act, 42 U.S.C. 247d, that a public health emergency exists, or some other public health determination. If so, should the regulation authorize the Director to require the submission of data for persons on inbound international flights that were completed prior to the issuance of the directive? If so, to what period of time prior to the directive should the Director be able to reach with this data submission requirement?

Any comments submitted in response to this interim final rule will be considered in the preparation of a final rule.

V. Rationale for Issuance of an Interim Final Rule With Immediate Effectiveness

Agency rulemaking is governed by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. Section 553(b) requires that, unless the rule falls within one of the enumerated exemptions, the Department must publish a notice of proposed rulemaking in the **Federal Register** that provides interested persons an opportunity to submit written data, views, or arguments, prior to finalization of regulatory requirements. Section 553(b)(3)(B) of the APA authorizes a department or agency to dispense with the prior notice and opportunity for public comment requirement when the agency, for ''good cause,'' finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

As noted above, although China has taken unprecedented steps to help control the virus, these steps have not stopped the virus from spreading outside of China into other countries, including the United States. During Fiscal Year 2019, an average of more than 14,000 people traveled to the United States from China each day, via both direct and indirect flights. That travel has decreased since the onset of the 2019–nCoV outbreak in China, and the U.S. government has taken steps to limit travel to the United States from China by aliens. Nevertheless, given the demands on its resources by the public health response to the current outbreak, CDC is experiencing difficulty in both actively monitoring travelers from China, and other countries with individuals infected with 2019–nCoV, and actively containing and arranging care for individuals at risk in the United States. The virus has caused severe illness and sustained person-to-person spread in China, and the United States reported the first confirmed instance of person-to-person spread with this virus on January 30, 2020. The goal of the ongoing U.S. public health response is to contain this outbreak and prevent sustained spread of 2019–nCoV in this country. HHS and CDC have determined that, given the exigent and rapidly emerging circumstances associated with the 2019–nCoV outbreak, it would be impracticable and contrary to the public health and, thus, to the public interest, to delay putting these provisions in place until a full public notice-and-comment process is completed.

Pursuant to 5 U.S.C. 553(b)(3)(B), and for the reasons stated above, HHS and CDC therefore conclude that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, HHS and CDC have determined, consistent with section 553(d) of the APA, that there is good cause to make this interim final rule effective immediately upon filing at the Office of the Federal Register.

VII. Regulatory Impact Analysis

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a regulation: (1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This interim final rule has been determined to be significant for the purposes of Executive Orders 12866 and 13563, and has been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). The requirement does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' *Id.* section 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the

rule, ''along with a statement providing the factual basis for such certification.'' *Id.* If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).[4] For the reasons set forth in this document pertaining to the outbreak and rapid spread of the 2019–nCoV, the Secretary finds that this interim final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 impracticable. HHS and CDC will assess the potential economic effects of this action on all small entities. Based on that assessment, HHS and CDC will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 13771

The White House issued Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This rule is not subject to Executive Order 13771, because it relates to a national security function of the United States as defined in OMB M–17–21, *Guidance Implementing Executive Order 13771, Titled* ''*Reducing Regulation and Controlling Regulatory Costs*''.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $154 million. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Department has determined that this interim final rule is not expected to result in expenditures by State, local, and tribal governments, or by the private sector, of $154 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

National Environmental Policy Act (NEPA)

The Department has determined that the amendments to 42 CFR part 71 will not have a significant impact on the human environment.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this rule under Executive Order 12988 on Civil Justice Reform and determines that this final rule meets the standard in the Executive Order.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. Under 42 U.S.C. 264(e), Federal public health regulations do not preempt State or local public health regulations, except in the event of a conflict with the exercise of Federal authority. Other than to restate this statutory provision, this rulemaking does not alter the relationship between the Federal government and State/local governments as set forth in 42 U.S.C. 264. The longstanding provision on preemption in the event of a conflict with Federal authority, 42 CFR 70.2, is left unchanged by this rulemaking. Additionally, there are no provisions in this regulation that impose direct compliance costs on State and local governments. Therefore, the Department believes that the rule does not warrant additional analysis under Executive Order 13132.

Plain Language Act of 2010

Under the Plain Language Act of 2010 (Pub. L. 111–274, October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

Congressional Review Act

The Congressional Review Act defines a ''major rule'' as ''any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' 5 U.S.C. 804(2). OIRA has determined that this interim final rule is not likely to result in an annual effect of $100,000,000 or more and is not otherwise a major rule for purposes of the Congressional Review Act.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. The Department has determined that this interim final rule will not have an impact on family well-being, as defined in the Act.

Paperwork Reduction Act of 1995

CDC currently has an approved Airline Traveler Information Collection (42 CFR part 71) (0920–1180 expires 05/31/2020), which covers its current collection of information from airlines under 42 CFR 71.4(a). The Office of Management and Budget has determined there is no new information collection requiring a submission of a

[4] An agency head may delay the completion of the regulatory impact analysis requirements for a period of not more than 180 days after the date of publication in the **Federal Register** of a final rule by publishing in the **Federal Register**, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with such requirements impracticable. If the agency has not prepared a final regulatory analysis within 180 days from the date of publication of the final rule, the RFA provides that the rule shall lapse and have no effect and shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency. 5 U.S.C. 608(b).

new information collection request under the Paperwork Reduction Act, (44 U.S.C. Chapter 35).

List of Subjects in 42 CFR Part 71

Apprehension, Communicable diseases, Conditional release, CDC, Ill person, Isolation, Non-invasive, Public health emergency, Public health prevention measures, Qualifying stage, Quarantine, Quarantinable Communicable Disease.

For the reasons set forth in the preamble, the Department of Health and Human Services, on behalf of the Centers for Disease Control and Prevention, amends 42 CFR part 71 as follows:

PART 71—FOREIGN QUARANTINE

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

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Amend § 71.4 by adding new paragraphs (d) and (e) to read as follows:

§ 71.4 Requirements relating to the transmission of airline passenger, crew, and flight information for public health purposes.

* * * * *

(d) Notwithstanding paragraph (a) of this section, any airline with a flight arriving into the United States, including any intermediate stops between the flight's origin and final destination, shall collect and, within 24 hours of an order by the Director, transmit to the Director the data elements in paragraph (e) of this section, in a format acceptable to the Director, for the passengers or crew who may be at risk of exposure to a communicable disease, for the purposes of public health follow-up, such as health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions.

(e) The data elements referred to in paragraph (d) of this section include, to the extent that such information exists for the individual:

(1) Full name (last, first, and, if available, middle or others);

(2) Address while in the United States (number and street, city, State, and zip code), except that U.S. citizens and lawful permanent residents will provide address of permanent residence in the U.S. (number and street, city, State, and zip code);

(3) Primary contact phone number to include country code;

(4) Secondary contact phone number to include country code; and

(5) Email address.

Dated: February 6, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–02731 Filed 2–7–20; 8:45 am]

BILLING CODE 4163–18–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 19–3; FCC 19–127; FRS 16411]

Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts changes to its rules and procedures to select and license competing applications for new noncommercial educational (NCE) broadcast stations and low power FM (LPFM) stations. The changes are designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

DATES: Effective April 13, 2020, except for rule changes to §§ 73.865, 73.872, 73.7002(c), 73.7003, and 73.7005. The Commission will publish a separate document in the **Federal Register** announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2721; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418–2704; Amy Van de Kerckhove, Attorney Advisor, Media Bureau, Audio Division, (202) 418–2726. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*R&O*), MB Docket No. 19–3; FCC 19–127, adopted on December 10, 2019, and released on December 11, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) website at *http://www.fcc.gov/ecfs.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, *see* 44 U.S.C. 3507. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the PRA. These new or modified information collections will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. *Introduction.* In this *R&O,* the Commission adopts changes to its rules and procedures for comparatively considering competing applications for new and major modifications to noncommercial educational FM radio stations, FM translator stations, and full power television stations (collectively, NCE or NCE broadcast) and low power FM (LPFM) stations, which it proposed in the notice of proposed rulemaking, 84 FR 10275 (March 20, 2019), FCC 19–9, 34 FCC Rcd 851 (2019) (*NPRM*). Specifically, it adopts several of the proposals from the *NPRM,* including: (1) Eliminating the requirement that NCE applicants amend their governing documents to pledge to maintain localism and diversity in order to receive points for being an ''established local applicant'' and for ''diversity of ownership''; (2) expanding the scope of the divestiture policies by recognizing station divestitures for comparative purposes; (3) improving and expanding the NCE tie-breaker process and reducing the need for mandatory time-sharing; (4) establishing a mandatory time-sharing process, similar to the LPFM involuntary time-share rules, for mutually exclusive (MX) NCE applicants that are unable to arrive at a voluntary time-share agreement; (5) clarifying aspects of the ''holding period'' rule by which NCE permittees must maintain the characteristics for which they received comparative preferences and points; (6) clarifying the LPFM rules to specifically permit LPFM applicants to discuss their intent to aggregate points and time-share prior to tentative selectee designations; (7) aiding NCE and LPFM permittees by eliminating certain tolling notification requirements; (8) supporting LPFM permittees and licensees by extending the construction period from 18 months to a full three years; and (9) allowing the assignment or transfer of LPFM permits after an 18-month holding period and eliminating the three-year holding period on assigning LPFM licenses. The changes are designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

2. Due to the noncommercial nature of the NCE and LPFM service, mutually exclusive (MX) applications for new station licenses are not subject to auction but are resolved by applying comparative procedures. This includes a point system, which is a simplified ''paper hearing'' method for selecting among MX applications. The NCE and LPFM comparative procedures used in past filing windows facilitated the grant of several thousand new station construction permits. Certain rules, however, confused applicants, drew criticism, or delayed the initiation of new service. Based on experience gained from the conduct of the prior NCE and LPFM filing windows, and the comments submitted in this proceeding, the Commission adopts changes to clarify, simplify, and otherwise improve its licensing procedures for new NCE broadcast and LPFM stations.

3. *Eliminate Governing Document Requirements for Established Local Applicants.* The Commission adopts the *NPRM's* proposal to eliminate the requirement that NCE applicants claiming points as an established local applicant amend their governing documents to require that ''localism be maintained'' (Localism Governing Document Requirement). Commenters support this change, and none oppose it.

4. Under the NCE point system selection process, to qualify as an ''established local applicant,'' as defined in 47 CFR 73.7000, a party must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing. Further, to receive three localism points, the rules currently require an applicant to submit in its initial application: (1) Documentation to illustrate how it qualifies as local and established; and (2) documentation demonstrating that the applicant's governing documents have been amended to require that ''such localism be maintained'' (Localism Governing Document Requirement).

5. The Commission will continue to enforce the existing requirement that an applicant submit substantiating documentation to verify that it has been local and established for at least two years immediately prior to the application filing. The Commission, however, eliminates the current 47 CFR 73.7003(b)(1) requirement that an applicant's governing documents be amended to include a localism provision, and the corresponding requirement to submit such documents to the Commission for all categories of applicants. The Commission believes, and commenters concur, that any benefits from the Localism Governing Document Requirement have been outweighed by the harm it has engendered in the licensing process.

6. To keep the points meaningful and safeguard the localism goals, the Commission incorporates into the current holding period rule a new provision explicitly requiring *any* prevailing applicant that receives localism points during the point system analysis to maintain localism during the period from the grant of the construction permit until the station has achieved four years of on-air operations. The Commission believes this rule clarification, along with a certification pledging to maintain localism at the time of filing the Schedule 340 application, will help protect the ''established local applicant'' criterion.

7. *Eliminate Governing Document Requirements for Applicants Claiming Diversity Points.* The Commission adopts the proposal in the *NPRM* to simplify its diversity of ownership requirements by eliminating both: (1) The requirement that applicants amend their governing documents, or provide an alternative demonstration to guarantee that ''diversity be maintained'' (the Diversity Governing Document Requirement), and (2) the requirement to submit such documents to the Commission and place the documentation in the applicant's public inspection file. The commenters addressing this proposal unanimously endorse this change.

8. Under the point system selection process, two points are awarded for local diversity of ownership if the principal community contour of the applicant's proposed NCE station does not overlap with those of any other station in which either the applicant or any party to the application holds an attributable interest. To qualify for diversity points, the Commission requires applicants to document both current and future diversity. In particular, to document future diversity, an applicant is required to file a copy of its pertinent corporate governance documents, showing that it properly amended its governing documents to require the maintenance of diversity in the future. The Commission has found, and commenters agree, that the requirement had the unintended effect of frustrating and confusing many applicants, sparking numerous challenges regarding whether applicants sufficiently satisfied the requirement, disqualifying legitimate applicants that failed to comprehend the requirement, and delaying or curtailing the initiation of new NCE FM service. The *R&O,* therefore, eliminates the Diversity Governing Document Requirement for all applicants seeking to qualify for diversity points.

9. To safeguard the Commission's diversity goals, the *R&O* incorporates into the current holding period rule a new provision prohibiting any prevailing applicant that receives diversity points during the point system

analysis from acquiring stations which would overlap the principal community contour of its new NCE station during the period from the grant of the construction permit until the station has achieved four years of on-air operations. The restriction will apply to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this period. The *R&O* also adds an additional question to FCC Schedule 340, FCC Form 314, and FCC Form 315, requiring applicants to certify that the proposed acquisition would comply with the subject authorization's diversity condition.

10. *Establish Uniform Divestiture Pledge Policies.* The *R&O* adopts the *NPRM*'s proposal to expand the scope of the Commission's divestiture policies by recognizing full-service station divestiture pledges for comparative purposes and crediting *all* contingent divestiture pledges that are made and submitted in the application by the close of the filing window.

11. The Commission examines an applicant's qualifications for comparative points, including diversity of ownership, as of the close of the filing window. The Commission previously held that, generally, a contingent pledge to divest an attributable broadcast interest or resign from an attributable positional interest is an ineffective mechanism to avoid the attribution of broadcast interests. Although the Commission has carved out exceptions to this general policy and accepts contingent divestiture pledges for some secondary services, the Commission has never allowed applicants to utilize contingent divestiture pledges to exclude full-service stations from the diversity of ownership consideration.

12. The Commission finds no compelling reason to continue to limit acceptable divestiture pledges for NCE applicants to *only* secondary service interest holdings, and commenters agree. The Commission concludes that the public interest is better served by permitting all applicants and parties to maintain continuity of service to the public during the licensing and construction process. Accordingly, the Commission will permit an NCE applicant with any type of overlapping attributable broadcast interest to qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest. The Commission explains that the divestiture pledge must be submitted by the close of the filing window. The actual divestiture or resignation must be completed by the time the new NCE station commences program test operations.

13. *Expand Tie-Breaker Criteria.* The *R&O* expands the Commission's tie-breaker criteria to add an additional tie-breaker round, and therefore, minimize the need to resort to the unpopular last-resort tie-breaker option, mandatory time-sharing. Under the NCE point system process, applicants tied with the highest number of points awarded in a MX group proceed to a tie-breaker round. If the tie is not broken, the Commission uses mandatory time-sharing as the tie-breaker of last resort for full-service NCE stations. The Commission has previously acknowledged that mandatory time-sharing ''can be difficult for applicants with different missions, philosophies, or formats'' as well as ''confusing to audiences and potentially inefficient to listeners.'' The *NPRM,* therefore, sought comment on whether there are further tie-breaking measures the Commission should use, and therefore, minimize the need to resort to the final mandatory time-sharing option.

14. The *R&O* adopts Discount Legal's proposal that an applicant be granted a dispositive tie-breaker preference if it can demonstrate that: (1) It applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; and (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present. The Commission concludes that Discount Legal's proposal is a practical, fair, and effective way to improve and apply the current tie-breaker process, award new permits to deserving legitimate applicants, and minimize resorting to the mandatory time-share option. Accordingly, the *R&O* incorporates Discount Legal's proposal into the Commission's rules as the third and final tie-breaker criterion. The tie-breaker is limited to applicants that were unsuccessful in all previous NCE windows in which they participated and have no NCE permits or licenses. In the event a tie is still not resolved after this new third tie-breaker criterion, the Commission will impose mandatory time-sharing on the remaining applicants

15. *Revise Procedures for Allocating Time in NCE Mandatory Time-Sharing Situations.* The *R&O* adopts mandatory time-share rules and procedures for mutually exclusive NCE applicants, modeled after the current LPFM rules, including a rule to delineate an explicit deadline for submitting voluntary time-share agreements and detailed steps to allocate time to NCE tentative selectees that are unable to arrive at a voluntary time-share agreement within the allotted deadline. The new rules are designed to expedite new NCE service to the public and expand the diversity of voices available to radio audiences.

16. The *NPRM* proposed rules and procedures for mutually exclusive NCE tentative selectees that are unable to reach a voluntary time-share agreement, modeled after the LPFM service rules. Commenters agree with the proposed changes. The *R&O,* therefore, adopts an explicit 90-day deadline and requires tied NCE applicants to file voluntary time-share agreements within 90 days of the release of the public notice or order announcing the tie. If mutually exclusive tied NCE applicants are unable to reach a voluntary time-share agreement within the designated 90-day period, the applicants will now proceed to mandatory time-sharing, modeled after the LPFM involuntary time-share rules, which have worked effectively to resolve mutual exclusivities and expedite new service to the public. Pursuant to the new mandatory time-share rules, NCE applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms. The number of mandatory time-share applicants is limited to three. Although some commenters suggested no limit, the Commission explains that mandatory time-shares with more than three applicants may be cumbersome, may result in the licensees obtaining too few hours for programming and prove difficult to allocate time-slots and assign the applicants an equal number of hours per week. If there are more than three tied, grantable applicants in an MX group, the Commission will use the date of established presence in the local community as the cut-off mechanism, and therefore, dismiss all but the applications of the three applicants that have been local for the longest uninterrupted periods of time.

17. To effectuate this process, the Commission will require each applicant to provide, as part of its initial application, its date of established presence in the local community. The *R&O* also adopts time slots and selection procedures modeled after the LPFM service. Specifically, when there are three remaining tied NCE applicants in an MX group, the Commission will assign each applicant one of the following time slots: 2 a.m.–9:59 a.m., 10 a.m.–5:59 p.m., and 6 p.m.–1:59 a.m. If there are only two applicants, the Commission will assign each one of the following time slots: 3 a.m.–2:59 p.m., or 3 p.m.–2:59 a.m. The Bureau staff will allow the NCE applicants to

confidentially select their preferred time slots, giving preference to the applicant that has been local for the longest uninterrupted period of time. In the event an applicant neglects to designate its preferred time slot, the Bureau staff will select a time slot for the applicant. Finally, to ensure that there is no gamesmanship, the Commission will require the applicants to certify that they have not colluded with any other applicants in the selection of time slots.

18. *Clarify and Modify the ''Holding Period'' Rule.* The *R&O* adopts both stylistic and substantive changes to 47 CFR 73.7005 (the Holding Period Rule) to (1) better promote the goal of ensuring that the comparative selection process is meaningful and the public receives the benefit of the best proposal, and (2) aid permittees and licensees by eliminating the current absolute bar on any section 307(b) preference-related service downgrade. The commenters who addressed this issue generally agree with the changes, with some suggested modifications.

19. First, the Commission renames § 73.7005 of the rules ''Maintenance of comparative qualifications.'' Second, the Commission adopts a new provision to § 73.7005 to establish, for the first time, specific timing requirements for maintaining comparative qualifications. Specifically, NCE permittees and licensees issued authorizations under comparative procedures must maintain their comparative qualifications from the grant of the construction permit until the station has achieved at least four years of on-air operations. Although Prometheus contends that a four-year maintenance period is not sufficient and suggests a ten-year maintenance period, the Commission explains that a four-year period strikes the correct balance and is sufficient to establish meaningful service for the community and deter license speculators, while not unduly burdening the licensee.

20. Third, the Commission relaxes § 73.7005(b) and the parallel provision in § 73.7002(c) (Fair distribution of service on reserved band FM channels) to eliminate the current absolute bar on any preference-related service downgrade. The Commission explains that it will allow minor modifications, provided that any potential loss of first and/or second NCE FM service is offset by first and, separately, combined first and/or second NCE FM service population gain(s). This rule change is designed to aid permittees and licensees by allowing them reasonable flexibility to implement facility modifications while also benefiting the public by limiting service losses to areas in which the NCE FM station is providing section 307(b)-preferred service.

21. *Prohibit Amendments to Cure Section 301 Violations by Application Parties.* The Commission amends its rules to preclude an LPFM applicant dismissed due to unauthorized broadcasting from seeking *nunc pro tunc* reinstatement of its application and to disallow any change in directors as a means of resolving the applicant's basic qualifications under 47 CFR 73.854. Section 632(a)(1)(B) of the Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act ''prohibit[s] any applicant from obtaining a low power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934.'' Section 73.854 of the rules and FCC Schedule 318 implement this mandate by requiring an LPFM applicant to certify under penalty of perjury that neither the applicant, nor any party to the application, has engaged in any manner in unlicensed operation of any station. There is currently no explicit rule, however, precluding an LPFM applicant dismissed for violations of the Appropriations Act and § 73.854 from seeking *nunc pro tunc* reinstatement by amending its application to remove board members that have engaged in unauthorized broadcasting, and no rule barring an LPFM applicant from making a minor board of directors change to cure an ''unauthorized broadcasting'' ownership defect. The *R&O* incorporates these restrictions, which are consistent with Bureau policy, into the rules.

22. Although commenters disagree on the breadth of the changes, the Commission declines to adopt suggestions to make the rule more encompassing, or less harsh. The Commission explains that the rule was implemented to specifically address Congress's direct mandate to treat unlicensed broadcasting as disqualifying, not to address a myriad of additional application defects. The Commission also explains that it continues to believe that a restriction on corrective amendments to resolve basic qualification issues under § 73.854 is not too harsh, but rather, is in keeping with the intent of the Appropriations Act and reflects the seriousness with which the Commission treats unauthorized broadcasting.

23. *Permit Time-Sharing Agreements Prior to Tentative Selectee Designations.* The *R&O* modifies 47 CFR 73.872(c) to specifically permit LPFM point aggregation discussions and agreements at any point before the Bureau implements the involuntary time-share procedures, including prior to tentative selectee designations, if any such agreement is conditioned on each of the parties subsequently achieving tentative selectee status. The Commission also modifies its rules to limit the number of applicants that can enter into a time-sharing arrangement to three.

24. The Commission explains that although its procedures for voluntary time-share agreements have generally been an efficient and effective means for resolving mutual exclusivity among tied LPFM applicants, there has been confusion as to whether LPFM applicants can communicate and collaborate with each other, either pre- or post-application filing, with the goal of potentially aggregating points. Accordingly, in the *NPRM* the Commission sought comment on amending its rules to explicitly allow applicants to communicate and collaborate on time sharing arrangements, and what, if any, safeguards are needed to limit the potential for gamesmanship. The commenters generally agree on allowing communication and collaboration during the LPFM application process. The Commission explains that it continues to believe this type of cooperation can help ensure increased service to the public, and accordingly, amends its rules to explicitly allow LPFM point aggregation discussions and agreements, provided that the agreement is conditioned on each application becoming a tentative selectee.

25. The commenters disagree widely on what safeguards, if any, are necessary to prevent gamesmanship, and whether to limit the number of organizations that can enter into a time-sharing agreement. Several commenters urge the Commission to place no limit on the number of applicants that can enter into a time-sharing agreement. REC recommends limiting time-share agreements to no more than three proponents and adopting safeguard provisions to create ''viable time-share agreements.''

26. The Commission recognizes that there are indeed benefits, as many commenters note, of placing no explicit limit on the number of applicants that can enter into a point aggregation agreement. The Commission, however, also recognizes that it encourages LPFM stations to originate programming locally by awarding one point to each MX applicant that pledges to provide at least eight hours per day of local programming. The Commission explains that if it continues to place no limit on point aggregation, each applicant in a group with more than three applicants

will not be able to fulfill this local origination commitment. The *R&O,* therefore, caps the number of applicants that can aggregate points at three to better align with the eight hours of local programming pledge and ensure that the pledge is enforceable. The Commission declines, however, to adopt REC's other ''safeguard'' proposals, including the proposal to require time share applicants to specify different transmitter sites with a minimum separation from the other proponents. The Commission explains that this suggested safeguard would unnecessarily penalize future LPFM applicants and hamper the cost efficiencies of timesharing.

27. Finally, the Commission declines to reconsider the current process for reapportioning time following the surrender or expiration of a construction permit or license of a time-share party. Currently, following the award of voluntary time-share construction permits, if one of the participants in a voluntary time-sharing arrangement does not construct, or surrenders its station license after commencing operations, the remaining time-share participants are free to apportion the vacant air-time as they see fit. Although two commenters expressed support for requiring abandoned air-time to instead be made available in a mini-window, the Commission explains that mini-windows are a complicated solution that would likely pose a great administrative burden while providing only minimal benefits. Moreover, the Commission explains that its elimination of the absolute prohibition on the assignment and transfer of LPFM construction permits and the three-year holding period for LPFM licenses is a necessary change that will help to ensure viable community groups build LPFM stations. Accordingly, the *R&O* does not adopt a mini-window approach. Rather, if one of the participants in a voluntary time-sharing arrangement does not construct, or chooses to surrender its station license after commencing operations, the particular permittee or licensee may either (1) seek Commission consent to assign or transfer its existing permit or license to another qualified party; or (2) surrender the existing permit or license to the Commission, and the remaining time-share participants can apportion the vacant air-time as they see fit pursuant to 47 CFR 73.872(c)(3).

28. *Establish Procedures for Remaining Tentative Selectees Following Dismissal of Accepted Point Aggregation Time Share Agreements.* The Commission amends its rules to codify a procedure that when a tentatively accepted time-share agreement is dismissed, the Bureau will resume the processing of any remaining tentative selectees. As proposed in the *NPRM,* the Commission will announce a second 90-day period, affording all remaining applicants tied for the highest point total within the affected MX group a further opportunity to enter into either a universal settlement or a voluntary time-share arrangement.

29. The Commission declines to shorten the time-period for filing voluntary time-sharing arrangements, as one commenter suggests. The Commission explains that it believes a 90-day period is necessary to allow applicants sufficient time to negotiate and reach viable agreements. The Commission also declines to amend its rules to allow for a third 90-day period, explaining that such a change would have minimal benefit, but rather, would create an administrative burden and delay the initiation of new LPFM service.

30. The Commission codifies the following procedural changes. Following the dismissal of a tentatively-accepted time-share agreement, the Commission will direct the Bureau to release a public notice to initiate a second 90-day period, affording *all* remaining tentative selectees within the affected MX group a further opportunity to enter into either a universal settlement or a voluntary point-aggregating time-share arrangement in accordance with § 73.872(c) and (e). The Commission directs the Bureau to dismiss all pending point aggregation amendments/agreements when it releases the public notice commencing the new settlement period. If applicants are unable to reach voluntary agreements during this subsequent 90-day period, the Commission will assign involuntary time-sharing arrangements to no more than three of the tied applicants in each MX Group.

31. *NCE and LPFM Board Changes.* To decrease regulatory burdens and provide certainty, the Commission amends its rules to classify as ''minor'' most board changes for nonstock and membership NCE and LPFM applicants. The Commission will also treat all board changes in a governmental applicant as minor.

32. The NCE and LPFM new station application processes are governed by §§ 73.3572, 73.3573, and 73.871, respectively, each of which define as a ''major change'' any amendment to an application where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed. The Commission's current practice is to consider waivers for gradual (although not sudden) majority board changes occurring while a new station application is pending. Because the current waiver approach has led to uncertainty for NCE and LPFM applicants undergoing board changes as a regular or natural part of their organizational function, the *NPRM* proposed to amend the rules to classify as ''minor'' any gradual board changes in nonstock and membership NCE and LPFM applicants, even when they result in a change in the majority of such organization's governing board.

33. The Commission declines to adopt Public Broadcasting and Joint NCE Licensee's approach of considering any change in an NCE or LPFM applicant governing board, regardless of the timing and regardless of whether it changes the majority of the governing board, as minor. The Commission explains that it is not feasible or appropriate in light of the wide, diverse range of NCE and LPFM applicants and its experience with previous application filing windows when it identified problematic board changes. The Commission recognizes that a although a change in the composition of the board generally does not alter the nature of the NCE or LPFM applicant itself, there are nevertheless instances where a majority board change is indicative of gamesmanship or takeover issues. The commenters' suggested approach would not allow the Commission to detect such issues and respond to such circumstances, which is inconsistent with its processing regime.

34. The Commission, however, concurs with Public Broadcasting and the Joint NCE Licensees that all changes to governing boards of governmental applicants should be treated as minor and adopts this proposal from the *NPRM.* The Commission also agrees that it is unnecessary to make a finding that changes in governmental applicants have no effect on the applicant's mission and will omit this requirement from its rules. For non-governmental applicants, the Commission will continue to treat gradual board changes as minor. The Commission recognizes that nonprofit organizations often have routine or mandated changes in board members that do not impact the organization or its operations, and accordingly, will treat all routine board turnover changes due to term expirations, resignations, etc. as minor. For sudden board changes that take place over the course of less than six months, the Commission will treat those changes as minor unless there is evidence that the change in the board is the result of a conflict within the

organization, an attempted takeover or some other change that would change the essence or mission of the organization. To the extent that an ownership change is not solely board-related, the Commission is not modifying the existing standard for what constitutes a major change. The rule changes will allow the Commission to avoid micromanaging the composition of nonprofit boards and discontinue the current potentially subjective and time-consuming waiver process, while deterring abuses. Finally, the Commission emphasizes that any applicant undergoing a change of its governing board, even if considered minor under the new rules, is required to notify the Bureau of the changes via an amendment to its application, in accordance with 47 CFR 1.65.

35. *LPFM-specific transferability issues for permittees and licensees.* The Commission clarifies how board changes impact LPFM licensees and permittees under rule 73.865. The modification is intended to provide clarity to LPFM permittees and licensees that a sudden change of control of more than 50 percent of an LPFM board is permitted at any time, provided that the affected permittee or licensee files a *pro forma* FCC Schedule 316 for a sudden majority board change. The Commission also clarifies that the 316 application must be filed within 30 days of the final event that caused the LPFM permittee or licensee to exceed the 50 percent threshold (for example, within 30 days of the election of a third new board member out of five within a year).

36. *Clarify Reasonable Site Assurance Requirements.* To promote compliance with the reasonable site assurance requirement and the efficient processing of NCE and LPFM applications, the Commission implements FCC Schedule 318 and Schedule 340 instruction and application form changes, including adding a reasonable assurance of site certification to these applications. When an applicant files an application, it must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities. Despite this obligation, NCE and LPFM station applicants have never been required to certify the availability of proposed transmitter sites in the NCE and LPFM construction permit applications, and the Instructions to the NCE and LPFM construction permit applications do not explain the Commission's site availability requirements. This lack of clarity led to speculative applications, numerous site availability challenges, and processing delays. The commenters agree that application form changes are necessary to address these issues.

37. Although some commenters argue that requiring site assurance documentation could be burdensome, the Commission explains that any purported burden of a combined site certification and the minimal documentation requirement is offset by the resulting benefits of reducing frivolous and speculative applications, deterring site availability challenges, and promoting the expeditious processing of applications and initiation of service to the public. The Commission, therefore, directs the Bureau to take the following steps. First, it will update the FCC Schedule 318 and Schedule 340 Instructions to explain the requirement of obtaining reasonable site availability prior to the application filing. Second, it will amend the FCC Schedule 318 and Schedule 340 to add a question requiring an applicant to certify that it has obtained reasonable assurance from the tower owner, its agent, or authorized representative that its specified site will be available. The certification will require the applicant to list the name and telephone number of the person contacted, and specify whether the contact is a tower owner, agent, or authorized representative.

38. *Streamline Tolling Procedures and Notification Requirements.* The Commission adopts the *NPRM*'s proposal to simplify the tolling procedures for NCE and LPFM permittees, including the current tolling notification requirements for these services. Broadcast construction permits terminate and, thus, are forfeited, if the permittee does not complete construction and file a covering license application prior to expiration. Although the Commission will ''toll'' the broadcast construction period when an original construction permit is encumbered by certain circumstances beyond the permittee's control, tolling treatment is not automatic but rather requires notification from the permittee.

39. Because the Commission has characterized tolling notification requirements as an unnecessary bureaucratic hurdle for LPFM permittees with limited resources, the *NPRM* proposed to shift the onus of identifying a tolling event from the permittee to the Commission staff in certain situations. The *R&O* streamlines the tolling procedures for both NCE and LPFM permittees as follows. The Commission will identify and place into a tolling posture any NCE or LPFM construction permit: (1) That includes a condition on the commencement of operations and the Commission has a direct licensing role in the satisfaction of this condition; (2) that is subject to administrative or judicial review of the permit grant; or (3) that is subject to international coordination. In such situations, the Commission directs the Bureau staff to add appropriate tolling codes to the broadcast database. Permits tolled by staff under these revised procedures will not be subject to the six-month update requirement. Rather, the Commission will be responsible for ending tolling treatment and notifying the permittee of such termination upon the resolution of the pertinent encumbrance. These changes are limited to NCE and LPFM stations, services which have more commonly encountered challenges with the current tolling procedures.

40. *Lengthen LPFM Construction Period.* The Commission adopts the *NPRM*'s proposal to lengthen the construction period for LPFM permittees from 18-months to a full three-years. Commenters agree that lengthening the construction period will have the dual benefit of aiding LPFM permittees struggling to complete construction and eliminating the administrative burdens associated with filing and processing waiver requests. The Commission amends 47 CFR 73.3598(a) to extend the LPFM construction period to three years. The extended construction period will apply to both existing LPFM permits, which have not yet expired as of the effective date of the new rule and will now expire three years from the original grant of the permit, and prospectively to new permits granted after the new rule takes effect.

41. *Modify Restrictions on the Transfer and Assignment of LPFM Authorizations.* The Commission adopts the *NPRM*'s proposal, which was initiated by REC, to eliminate both the absolute prohibition on the assignment and transfer of LPFM construction permits and the three-year holding period for LPFM licenses. The Commission also adopts an 18-month holding period on the assignment and transfer of original LPFM construction permits and requires the assignee or transferee of the authorization to satisfy certain ownership and eligibility criteria including compliance with the Holding Period rule. No commenter objects to these changes.

42. Some commenters, however, disagree on whether and how to limit consideration for the sale of the authorization. The Commission declines to adopt a proposal to remove the requirement that all sales be capped at fair market value. As the Commission has previously emphasized, the for-profit sale of LPFM authorizations is

inconsistent with the goal of promoting local, community-based use and ownership of LPFM stations. The Commission explains that it believes that allowing the for-profit sale could have the adverse effect of enabling gamesmanship and the trafficking in licenses by those with no genuine interest in providing LPFM service. The Commission, therefore, retains the prohibition on the for-profit sale of LPFM authorizations, uses the same consideration standard that it applies to full-service NCE FM stations, and restricts consideration received or promised to the assignor's or transferor's ''legitimate and prudent expenses.'' ''Legitimate and prudent expenses'' are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (*e.g.,* expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, etc.), but do not include costs incurred in operating the station (*e.g.* rent, salaries, utilities, music licensing fees, etc.).

43. The Commission modifies its rules to permit parties to assign or transfer LPFM permits and station licenses, provided that the following safeguards are satisfied: (1) The assignment or transfer does not occur prior to 18 months from the date of issue of the initial construction permit; (2) consideration promised or received does not exceed the legitimate and prudent expenses of the assignor or transferor; (3) the assignee or transferee satisfies all eligibility criteria that apply to a LPFM license; and (4) for a period of time commencing with the grant of any permit awarded on the basis of the comparative point system provisions of 47 CFR 73.872, and continuing until the station has achieved at least four years of on-air operations, (a) the assignee or transferee must meet or exceed those points awarded to the LPFM tentative selectee, and (b) for LPFM stations selected in accordance with the involuntary time-sharing provisions of 47 CFR 73.872(d), the date the assignee or transferee was ''locally established'' must be the same as or earlier than the date of the most recently established local applicant in the tied MX group.

Procedural Matters

44. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Certification was incorporated into the *NPRM.* The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. Because the Commission amended the rules in this *R&O,* it included this Final Regulatory Flexibility Analysis (FRFA) which conforms to the RFA.

45. *Need for, and Objectives of, the R&O.* The *R&O* adopts several rule changes that are intended to clarify and simplify the point systems used to evaluate competing applications for both NCE full-service FM, full power television, and FM translator broadcast stations and LPFM broadcast stations, and related NCE and LPFM application processing rules. Specifically, in the *R&O* the Commission adopts new rules and procedures to: (1) Eliminate the current requirement that NCE applicants amend their governing documents, pledging that localism/diversity be ''maintained in the future,'' in order to receive comparative points as an ''established local applicant'' and or ''diversity of ownership''; (2) expand the scope of the current divestiture policy by awarding points based on a contingent pledge to divest an interest in an existing full-service station, therefore allowing applicants to maintain continuity of service during the licensing and construction process; (3) expand the current two tie-breaker criteria to add an additional tie-breaker round and thus reduce the need for mandatory time-sharing; (4) clarify aspects of the ''holding period'' to better promote the goal of ensuring that the comparative selection process is meaningful and the public receives the benefit of the best proposal; (5) disallow any LPFM post-filing window change in directors as a means of resolving an alleged history of unauthorized operations by a party to the application; (6) adopt new rules authorizing early time-sharing discussions among LPFM applicants and limit the number of applicants that can enter into a time-sharing arrangement to three; (7) establish a process pursuant to which the Media Bureau will resume the processing of any remaining tentative selectees following the dismissal of a tentatively accepted time-share agreement; (8) modify the NCE and LPFM application forms to clarify the existing requirement for applicants to obtain reasonable assurance of site availability and add a reasonable assurance of site certification to these forms; (9) toll, meaning temporarily stop the construction clock, NCE and LPFM broadcast construction deadlines without notification from the permittee, based on certain pleadings pending before, or actions taken by, the agency; (10) lengthen the LPFM construction period from 18 months to three years; (11) allow the assignment and transfer of LPFM construction permits after an 18-month holding period; and (12) eliminate the three-year holding period for the assignment and transfer of LPFM licenses. The new rules and procedures are designed to clarify the comparative requirements, minimize confusion among applicants, deter speculative applications, reduce burdens upon NCE and LPFM broadcasters, and initiate service to the public quickly and efficiently.

46. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed to the IRFA.

47. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

48. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

49. The new rules will apply to applicants, permittees, and licensees within the LPFM service, NCE full power television service, and to radio stations licensed to operate on channels reserved as ''noncommercial educational,'' either within the reserved band of the FM spectrum or designated solely for noncommercial educational FM use through the Commission's allocations process. Most affected entities will be applicants for which a ''point system'' process is used to compare their qualifications with those of competing applicants. However, the rule changes concerning reasonable site assurance and tolling of broadcast construction deadlines will also affect

applications granted outside of the comparative process, such as those that are ''singletons'' or resolved by settlement among originally conflicting parties. Below is a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

50. *NCE FM Radio Stations.* The new rules and policies will apply to NCE FM radio broadcast licensees, and potential licensees of NCE FM radio service. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, the Commission concludes that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,122. NCE stations are non-profit, and therefore considered to be small entities.

51. The changes adopted herein will primarily impact potential licensees. The Commission accepts applications for new NCE FM radio broadcast stations in filing windows. There are no pending applications remaining from previous NCE FM filing windows. The Commission anticipates that in future filing windows it will receive a number of applications similar to past filing windows and that all such applicants will qualify as small entities. The last filing window for reserved band FM spectrum occurred in 2007 and generated approximately 3,600 applications, of which approximately 2,700 were mutually exclusive. The last filing window for channels reserved for NCE use through the allotment process was held in 2010, and generated 323 applications, virtually all of which were mutually exclusive. This estimate may overstate the number of potentially affected applicants because filing windows typically include some proposals that need not be resolved by a point system, such as those resolved through settlement agreements.

52. *FM Translator Stations and Low Power FM Stations.* The changes adopted herein will affect licensees of FM translator stations and LPFM stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,186. In addition, as of September 30, 2019, there were a total of 8,177 FM translator and FM booster stations. Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, the Commission will presume that these licensees qualify as small entities under the SBA definition.

53. The new rules will primarily affect applicants in future FM translator and LPFM windows. The Commission anticipates that in future filing windows it will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The last LPFM filing window in 2013 generated approximately 2,827 applications. The 2003 FM translator filing window generated approximately several hundred applications from NCE applicants, of which approximately 69 were mutually exclusive.

54. *NCE Television Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data the Commission therefore estimates that the majority of noncommercial television broadcasters are small entities under the applicable SBA size standard. Specifically, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

55. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The rule changes adopted in the *R&O* will, in a few cases, impose different reporting requirements on potential NCE full-service stations, NCE FM Translators, and LPFM licensees and permittees. Specifically, the *R&O* creates a new submission of information verifying that the applicant obtained reasonable assurance of site availability. The applicant will be required to list the name and telephone number of the person contacted to obtain site assurance, and specify whether the contact is a tower owner, agent, or authorized representative. Any additional burden, however, will be minimal because the underlying requirement to obtain such assurance is currently a prerequisite to the application filing. Likewise, NCE applicants seeking points as ''established local applicants'' or for ''diversity of ownership'' will be required to provide information that is different from that currently required. The Commission believes that the new information will be simpler for applicants to produce because applicants will no longer be required to amend their governing documents. The elimination of certain tolling notification requirements, and shifting the onus of identifying a tolling event from the permittee to Commission staff in certain situations, will decrease burdens on applicants that experience encumbrances preventing construction. An NCE or LPFM permittee will receive additional construction time for which it qualifies without initiating a process to notify the Commission of actions taken by or pending within the Commission. By lengthening the LPFM construction period to three years, LPFM permittees needing more than the current 18-month construction period will no longer need to file and justify requests for an 18-month extension. Finally, by adopting the proposals to clarify and/or modify application requirements that applicants have found confusing, the burdens on applicants to file and/or respond to petitions challenging point claims will be reduced.

56. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

57. The rules adopted herein are intended to assist NCE full-service broadcast stations, NCE FM Translator, and LPFM broadcast applicants by clarifying and simplifying requirements for claiming and maintaining qualifications that are used to compare competing applications. The new rules and procedures will enable such applicants: (1) To claim comparative points without the burdensome process of amending their governing documents; and (2) to maintain existing full-service broadcast operations by allowing contingent pledges that do not require divestment of existing interests prior to application grant. The new rules will also: (1) Expand the current two tie-breaker criteria to add an additional tie-breaker round, and therefore, reduce the need for the currently unpopular use of mandatory time-sharing; (2) eliminate the assignment and transfer ''holding period'' for LPFM licenses, clarify elements of the NCE ''holding period'' rule, and aid permittees and licensees by eliminating the current absolute bar on any section 307(b) preference-related service downgrade; (3) clarify that LPFM applicants dismissed due to unauthorized broadcasting operations cannot seek to reinstate the application by removing the board member(s) that have engaged in unauthorized broadcasting; (4) reduce challenges based on reasonable assurance of site availability; (5) toll NCE and LPFM broadcast construction deadlines without notification, for certain matters known to the agency, including when a permit is subject to international coordination or under administrative or judicial review; (6) provide at the outset a longer construction period for LPFM stations; and (7) permit the assignment and transfer of LPFM construction permits after 18 months. The Commission sought comment as to whether its goals of providing new NCE and LPFM service to the public, limiting speculation, and clarifying requirements could effectively be accomplished through these means, and the commenters supported the changes. The rules adopted herein are intended to minimize burdens on NCE and LPFM broadcasters, virtually all of whom are small businesses.

58. *Report to Congress.* The Commission will send a copy of this *R&O,* including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

59. *Paperwork Reduction Act.* The *R&O* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

60. In this *R&O,* the Commission adopts new rules and licensing procedures for new NCE broadcast and LPFM stations. The Commission has assessed the effects of the new rules on small business concerns. It finds that the streamlined rules and procedures adopted here will minimize the information collection burden on affected applicants, permittees, and licensees, including small businesses.

61. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

62. *It is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i),154(j), 301, 303, 307, 308, 309, 316, and 319, this *R&O is adopted* and *will become effective* 60 days after publication in the **Federal Register**.

63. *It is further ordered* that part 73 of the Commission's Rules *is amended* and the rule changes to §§ 73.854, 73.871(c), 73.3572(b), 73.3573(a), and 73.3598 adopted herein will become effective 60 days after the date of publication in the **Federal Register**.

64. *It is further ordered* that the rule changes to §§ 73.865, 73.872, 73.7002(c), 73.7003, and 73.7005, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

65. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–3 *shall be terminated,* and its docket *closed.*

66. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *R&O,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

67. *It is further ordered* that the Commission *shall send* a copy of this *R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Cable television, Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Satellites, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Revise § 73.854 to read as follows:

§ 73.854 Unlicensed radio operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner, including individually or with persons, groups, organizations, or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301. If an application is dismissed pursuant to this section, the applicant is precluded from seeking *nunc pro tunc* reinstatement of the application and/or changing its directors to resolve the basic qualification issues.

■ 3. Revise § 73.865 to read as follows:

§ 73.865 Assignment and transfer of LPFM permits and licenses.

(a) *Assignment/transfer.* No party may assign or transfer an LPFM permit or license if:

(1) Consideration promised or received exceeds the legitimate and prudent expenses of the assignor or transferor. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (*e.g.,* expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, etc.). Costs incurred in operating the station are not recoverable (*e.g.* rent, salaries, utilities, music licensing fees, etc.);

(2) The assignee or transferee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee; or

(3) For a period of time commencing with the grant of any construction permit awarded based on the comparative point system, § 73.872, and continuing until the station has achieved at least four years of on-air operations:

(i)(A) The assignee or transferee cannot meet or exceed the points awarded to the initial applicant; or

(B) Where the original LPFM construction permit was issued based on a point system tie-breaker, the assignee or transferee does not have a ''locally established date,'' as defined in § 73.853(b), that is the same as, or earlier than, the date of the most recently established local applicant in the tied mutually exclusive (MX) group.

(ii) Any successive applicants proposing to assign or transfer the construction permit or license prior to the end of the aforementioned period will be required to make the same demonstrations. This restriction does not apply to construction permits that are awarded to non-mutually exclusive applicants or through settlement.

(b) *Name change.* A change in the name of an LPFM permittee or licensee where no change in ownership or control is involved may be accomplished by written notification by the permittee or licensee to the Commission.

(c) *Holding period.* A construction permit cannot be assigned or transferred for 18 months from the date of issue.

(d) *Board changes.* Notwithstanding the other provisions in this section, transfers of control involving a sudden or gradual change of more than 50 percent of an LPFM's governing board are not prohibited, provided that the mission of the entity remains the same and the requirements of paragraph (a) of this section are satisfied. Sudden majority board changes shall be submitted as a *pro forma* ownership change within 30 days of the change or final event that caused the LPFM permittee or licensee to exceed the 50 percent threshold.

■ 4. Amend § 73.871 by revising paragraph (c)(3) to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) * * *

(3) Changes in ownership where the original party or parties to an application either:

(i) Retain more than a 50 percent ownership interest in the application as originally filed;

(ii) Retain an ownership interest of 50 percent or less as the result of governing board changes in a nonstock or membership applicant that occur over a period of six months or more; or

(iii) Retain an ownership interest of 50 percent or less as the result of governing board changes in a nonstock or membership applicant that occur over a period of less than six months and there is no evidence of a takeover concern or a significant effect on such organization's mission. All changes in a governmental applicant are considered minor;

* * * * *

■ 5. Amend § 73.872 by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, no more than three of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated. Applicants may agree, at any time before the Media Bureau implements the involuntary time-share procedures pursuant to paragraph (d) of this section, to aggregate their points to enter into a time-share agreement. Applicants can only aggregate their points and submit a time-share agreement if each is designated a tentative selectee in the same mutually exclusive group, and if each applicant has the basic qualifications to receive a grant of its application.

* * * * *

(5) In the event a tentatively accepted time-share agreement is dismissed, the Commission staff will release another public notice, initiating a second 90-day period for all remaining tentative selectees within the affected MX group to enter into either a voluntary time-share arrangement or a universal settlement in accordance with paragraph (c) or (e) of this section. If the tie is not resolved in accordance with paragraph (c) or (e) of this section, the tied applications will be reviewed for acceptability, and applicants with tied, grantable applications will be eligible for involuntary time-sharing in accordance with paragraph (d) of this section.

* * * * *

■ 6. Amend § 73.3572 by revising paragraph (b) to read as follows:

§ 73.3572 Processing TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

* * * * *

(b)(1) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major

change, as defined in paragraph (a)(1) or (2) of this section, or result in a situation where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, and § 73.3580 will apply to such amended application. However, such change in ownership is minor if:

(i) The governing board change in a nonstock or membership noncommercial educational (NCE) full power television applicant occurred over a period of six months or longer; or

(ii) The governing board change in a nonstock or membership NCE full power television applicant occurred over a period of less than six months and there is no evidence of a takeover concern or a significant effect on such organization's mission.

(2) All changes in a governmental applicant are considered minor.

(3) An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

■ 7. Amend § 73.3573 by revising paragraph (a)(1) introductory text to read as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes of authorized stations. A major change in ownership is one in which the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, except that such change in ownership is minor if: The governing board change in a nonstock or membership NCE applicant occurred over a period of six months or longer or the governing board change in a nonstock or membership NCE applicant occurred over a period of less than six months and there is no evidence of a takeover concern or a significant effect on such organization's mission. All changes in a governmental applicant are considered minor. In the case of a Class D or an NCE FM reserved band channel station, a major facility change is any change in antenna location which would not continue to provide a 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In the case of a Class D station, a major facility change is any change in community of license or any change in frequency other than to a first-, second-, or third-adjacent channel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

* * * * *

■ 8. Amend § 73.3598 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing the word ''or'' at the end of paragraph (b)(2);

■ c. Removing the period at the end of paragraph (b)(3) and adding a semicolon in its place;

■ d. Adding paragraphs (b)(4) and (5); and

■ e. Revising paragraphs (c) and (d).

The revisions and additions read as follows:

§ 73.3598 Period of construction.

(a) Except as provided in the last two sentences of this paragraph (a), each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; low power FM; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph (a) shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR parts 121 through 201, at the time the transaction is approved by the FCC, and holds:

* * * * *

(b) * * *

(4) A request for international coordination, with respect to a construction permit for stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received; or

(5) Failure of a Commission-imposed condition precedent prior to commencement of operation.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will identify and grant an initial period of tolling when the grant of a construction permit is encumbered by administrative or judicial review under the Commission's direct purview (*e.g.,* petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), a request for international coordination under paragraph (b)(4) of this section, or failure of a condition under paragraph (b)(5) of this section. When a permit is encumbered by administrative or judicial review outside of the Commission's direct purview (*e.g.,* local, state, or non-FCC Federal requirements), the permittee is required to notify the Commission of such tolling events.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in paragraph (c) of this section, unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will cease the tolling treatment and notify the permittee upon resolution of either:

(1) Any encumbrance by administrative or judicial review of the grant of the construction permit under the Commission's direct purview;

(2) The request for international coordination under paragraph (b)(4) of this section; or

(3) The condition on the commencement of operations under paragraph (b)(5) of this section.

* * * * *

■ 9. Amend § 73.7002 by revising paragraph (c) to read as follows:

§ 73.7002 Fair distribution of service on reserved band FM channels.

* * * * *

(c)(1) For a period of four years of on-air operations, an applicant receiving a decisive preference pursuant to this section is required to construct and operate technical facilities substantially as proposed. During this period, such applicant may make minor modifications to its authorized facilities, provided that either:

(i) The modification does not downgrade service to the area on which the preference was based; or

(ii) Any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference.

(2) Additionally, for a period beginning from the award of a construction permit through four years of on-air operations, a Tribal Applicant receiving a decisive preference pursuant to this section may not:

(i) Assign or transfer the authorization except to another party that qualifies as a Tribal Applicant;

(ii) Change the facility's community of license; or

(iii) Effect a technical change that would cause the facility to provide less than full Tribal Coverage.

■ 10. Amend § 73.7003 by:

■ a. Revising paragraphs (b)(1) and (2);

■ b. Adding a heading for paragraph (c)(1);

■ c. In paragraph (c)(2):

■ i. Adding a heading; and

■ ii. Removing the semicolon at the end of the paragraph and adding a period in its place;

■ d. Revising paragraph (c)(3); and

■ e. Adding paragraphs (c)(4) and (5).

The revisions and additions read as follows:

§ 73.7003 Point system selection procedures.

* * * * *

(b) * * *

(1) *Established local applicant.* Three points for local applicants, as defined in § 73.7000, who have been local continuously for no fewer than the two years (24 months) immediately prior to the application filing.

(2) *Local diversity of ownership.* Two points for applicants with no attributable interests, as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § 73.685(a) for TV. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(c) * * *

(1) *Tie breaker 1.* * * *

(2) *Tie breaker 2.* * * *

(3) *Tie breaker 3.* If a tie remains after the tie breaker in paragraph (c)(2) of this section, the tentative selectee will be the remaining applicant that can demonstrate that:

(i) It applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant with superior points or a tie-breaker showing;

(ii) It has been in continuous existence at all times from the date of that previous filing until the present; and

(iii) It does not hold any NCE construction permit or license.

(4) *Voluntary time-sharing.* If a tie remains after the tie breaker in paragraph (c)(3) of this section, each of the remaining tied, mutually exclusive applicants will be identified as a tentative selectee and must electronically submit, within 90-days from the release of the public notice or order announcing the remaining tie, any voluntary time-share agreement. Voluntary time-share agreements must be in writing, signed by each time-share proponent, and specify the proposed hours of operation of each time-share proponent.

(5) *Mandatory time-sharing.* If a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c)(4) of this section, the tied applications will be reviewed for acceptability. Applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms.

(i) If a mutually exclusive group has three or fewer tied, grantable applications, the Commission will simultaneously grant these applications, assigning an equal number of hours per week to each applicant. The Commission will require each applicant subject to mandatory time-sharing to simultaneously and confidentially submit their preferred time slots to the Commission. If there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3 a.m.–2:59 p.m., or 3 p.m.–2:59 a.m. If there are three tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: 2 a.m.–9:59 a.m., 10 a.m.–5:59 p.m., and 6 p.m.–1:59 a.m. The Commission will require the applicants to certify that they did not collude with any other applicants in the selection of time slots. The Commission will give preference to the applicant that has been local, as defined in § 73.7000, for the longest uninterrupted period of time. In the event an applicant neglects to designate its preferred time slots, staff will select a time slot for that applicant.

(ii) Groups of more than three tied, grantable applications will not be eligible for licensing under this section. Where such groups exist, the Commission will dismiss all but the applications of the three applicants that have been local, as defined in § 73.7000, for the longest uninterrupted periods of time. The Commission will then process the remaining applications as set forth in paragraph (c)(4)(i) of this section.

* * * * *

■ 11. Amend § 73.7005 by:

■ a. Revising the section heading and paragraph (b);

■ b. Redesignating paragraph (c) as paragraph (d);

■ c. Adding new paragraph (c); and

■ d. Adding a heading for newly redesignated paragraph (d)

The revision and addition read as follows:

§ 73.7005 Maintenance of comparative qualifications.

* * * * *

(b) *Technical.* In accordance with the provisions of § 73.7002, for a period of four years of on-air operations, an NCE FM applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed. During this period, such applicant may make minor modifications to its authorized facilities, provided that either:

(1) The modification does not downgrade service to the area on which the preference was based; or

(2) Any potential loss of first and second NCE service is offset by at least

equal first and, separately, combined first and second NCE service population gain(s).

(c) *Point system criteria.* Any applicant selected based on the point system (§ 73.7003) must maintain the characteristics for which it received points for a period of time commencing with the grant of the construction permit and continuing until the station has achieved at least four years of on-air operations. During this time, any applicant receiving points for diversity of ownership (§ 73.7003(b)(2)) and selected through the point system, is prohibited from:

(1) Acquiring any commercial or noncommercial AM, FM, or non-fill-in FM translator station which would overlap the principal community (city grade) contour of its NCE FM station received through the award of diversity points;

(2) Acquiring any UHF, VHF, or Class A television station which would overlap the principal community (city grade) contour of its NCE television station received through the award of diversity points;

(3) Proposing any modification to its NCE FM station received through the award of diversity points which would create overlap of the principal community (city grade) contour of such station with any attributable authorized commercial or noncommercial AM, FM, or non-fill-in FM translator station;

(4) Proposing any modification to its NCE television station received through the award of diversity points which would create overlap of the principal community (city grade) contour of such station with any attributable authorized UHF, VHF, or Class A television station;

(5) Proposing modifications to any attributable commercial or noncommercial AM, FM, or non-fill-in FM translator station which would create overlap with the principal community (city grade) contour of its NCE FM station received through the award of diversity points; and

(6) Proposing modifications to any attributable UHF, VHF, or Class A television station which would create overlap with the principal community (city grade) contour of its NCE television station received through the award of diversity points. This restriction applies to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this time period.

(d) *Non-comparative permits.* * * *

[FR Doc. 2020–01009 Filed 2–11–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665]

[RTID 0648–XP008

Pacific Island Fisheries; 2020 Northwestern Hawaiian Islands Lobster Harvest Guideline

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

ACTION: Notification of lobster harvest guideline.

SUMMARY: NMFS establishes the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2020 at zero lobsters.

DATES: February 12, 2020.

FOR FURTHER INFORMATION CONTACT: Mark R. Fox, NMFS PIR Sustainable Fisheries, tel 808–725–5171.

SUPPLEMENTARY INFORMATION: NMFS manages the NWHI commercial lobster fishery under the Fishery Ecosystem Plan for the Hawaiian Archipelago. The regulations at 50 CFR 665.252(b) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

Regulations governing the Papahanaumokuakea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline for the NWHI commercial lobster fishery for calendar year 2020 at zero lobsters. Harvest of NWHI lobster resources is not allowed.

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

Dated: January 31, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–02224 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 29
Wednesday, February 12, 2020

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AH01

Regulatory Reform Initiative: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: With this deregulatory action, the U.S. Small Business Administration (SBA) is revising regulations regarding rules of procedure governing cases before the office of hearings and appeals to remove an unnecessary regulatory provision and to clarify an existing rule of procedure.

DATES: Comments must be received on or before April 13, 2020.

ADDRESSES: You may submit comments, identified by RIN: 3245–AH01, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Ashley Cloud, Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI), as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Ashley Cloud, Office of Hearings and Appeals, 409 Third Street SW, Washington, DC 20416, or send an email to *OHA@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Delorice Price Ford, Assistant Administrator, Office of Hearings and Appeals, (202) 401–8200 or *delorice.ford@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Part 134, Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

SBA is proposing to remove § 134.317 from its regulations because the procedure addressed in this regulation, the return of size appeal case files, is no longer necessary. Case files are now transmitted electronically to the Office of Hearings and Appeals (OHA) from SBA's Area Offices, which eliminates the need to return paper records by mail. SBA is also revising § 134.714 to clarify that the decision of a Judge regarding a status protest appeal from a Women-Owned Small Business (WOSB) or Economically Disadvantaged Women-Owned Small Business (EDWOSB) is SBA's final agency decision and becomes effective upon issuance.

B. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: Eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

II. Section by Section Analysis

A. § 134.317 Return of the Case File

SBA is proposing to remove § 134.317 of its regulations, which currently states that upon issuance of a decision, OHA will return the case file to the transmitting Area Office. When a size appeal is filed, SBA's Area Office will often mail the original paper protest file to OHA for review. Pursuant to § 134.317, OHA will then send the original file back to the Area Office at the conclusion of the appeal process. For several years, however, OHA has transitioned many of its processes to electronic transmission and storage. OHA will now transition this part of the size appeal process to a completely electronic method. Therefore, neither the Area Offices nor OHA will need to mail the paper protest file back and forth. As such, this regulation is no longer necessary.

B. § 134.714 When must the Judge issue his or her decision?

SBA is proposing to add language to § 134.714 of its regulations to clarify that decisions issued by OHA pursuant to WOSB or EDWOSB status protest appeals are considered final agency decisions. Currently, the rule is silent on the issue, which could lead to confusion since other size and status appeal regulations in part 134 clearly state that the OHA decision is a final agency decision. *See* § 134.316(d) (size appeals), § 134.409(a) (8(a) appeals), and § 134.515(a) (Service-Disabled Veteran-Owned Small Business Concern status protest appeals). SBA does not follow a different process for women-owned businesses. For example, OHA's WOSB/EDWOSB appeal decisions currently state that the decision is the final agency decision. As such, SBA believes that the proposed revision for § 134.714 will clarify that the Judge's decision in a WOSB or EDWOSB status protest appeal is the final agency decision and that the decision becomes effective upon issuance.

III. Compliance With Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

B. Executive Order 13771

This proposed rule is expected to be an Executive Order deregulatory action with an annualized net savings of $28,733 and a net present value of $410,478, both in 2016 dollars.

This rule proposes to remove § 134.317, Return of the case file, because it is no longer necessary. Case files will now be transmitted electronically to OHA from the Area Office, eliminating the need to return paper records by mail. This rule will eliminate significant costs related to packing, labeling, and shipping case files from the transmitting Area Office and returning those files by mail. OHA receives and returns approximately 120 case files per fiscal year to the Area Offices, for a total of 240 shipments. Assuming it takes 45 minutes to prepare the shipment, printing, and mailing the files and that a GS–13 analyst performs this work at a wage of $112,393 plus 30 percent for benefits, or $146,111 ($73 hourly), this would save the government $13,140, annually. The cost of each shipment is approximately $70, which would save the government an additional $16,800 for a total savings of $29,940 per year, in current dollars.

C. Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. 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, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. If not, the RFA permits agencies to certify to that effect. SBA believes that the removal of § 134.317 will only impact itself and that it will save SBA the costs associated with mailing paper files back and forth during the appeal process. SBA therefore certifies that this rule has ''no significant impact upon a substantial number of small entities'' within the meaning of the RFA.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal employment opportunity, Lawyers, Organizations and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR part 134 as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Source: 61 FR 2683, Jan. 29, 1996, unless otherwise noted.

§ 134.317 [Removed and Reserved]

■ 2. Remove and reserve § 134.317.

■ 3. Amend § 134.714 by adding a sentence at the end of the section to read as follows:

§ 134.714 When must the Judge issue his or her decision?

* * * The Judge's decision is the final agency decision and becomes effective upon issuance.

Jovita Carranza,

Administrator.

[FR Doc. 2020–02494 Filed 2–11–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0026; Product Identifier 2018–SW–052–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This proposed AD would require revising the Rotorcraft Flight Manual (RFM) for your helicopter and either installing placards or removing the hoist arm. This proposed AD was prompted by a failure of a right-hand (RH) side lateral sliding plug door (sliding door) to jettison. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 13, 2020.

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

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for

and locating Docket No. FAA–2020–0026; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Kristin Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all the comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2018–0140–E, dated June 29, 2018 (EASA AD 2018–0140–E), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and EC 225 LP helicopters. EASA advises that during a jettison test of the RH side sliding door, the sliding door became blocked between the hoist, airframe, and access step. Interference was identified between the hoist arm and the sliding door median fitting (reinforced bracket). EASA identifies the reinforced bracket as Airbus Helicopter modification (MOD) 0726841, which was required by EASA AD No. 2015–0167, dated August 12, 2015. EASA states that this condition could prevent jettisoning of the RH sliding door in an emergency, subsequently obstructing evacuation, and possibly resulting in injury to occupants. To correct this unsafe condition, EASA AD 2018–0140–E requires removing the hoist arm, or alternatively revising the applicable RFM and installing placards to specify using the normal door handle instead of the jettison handle for the RH side sliding door.

EASA states that Airbus Helicopters is developing a modification to eliminate the interference between the hoist arm and the reinforced bracket. As a result, EASA considers its AD an interim action and states that further AD action may follow.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has co-published as one document Emergency Alert Service Bulletin (EASB) No. 01.00.89, Revision 1, dated June 28, 2018, for Model AS332-series helicopters; No. 04A014, Revision 1, dated June 28, 2018, for Model EC225 helicopters; and No. 01.00.52, Revision 1, dated June 28, 2018, for non-FAA type certificated Model AS532 helicopters. EASB Nos. 01.00.89 and 04A014 are proposed for incorporation by reference in this proposed AD. EASB No. 01.00.52 is not proposed for incorporation by reference in this proposed AD. This service information provides pages to add to the emergency and normal procedures sections of the RFM, and specifies either removing the hoist arm or installing placards that require using the normal door handle instead of the jettison handle for the RH side sliding door. This service information further allows installing the placards during each installation of the hoist arm and removing the placards with each removal of the hoist arm.

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

Other Related Service Information

Airbus Helicopters has issued Service Bulletin (SB) No. AS332–52.00.43 for Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters and SB No. EC225–52–008 for Model EC225LP helicopters, both Revision 0 and dated June 23, 2015. This service information contains procedures for installing the reinforced bracket identified as MOD 0726841.

Proposed AD Requirements

This proposed AD would require revising the RFM for your helicopter by adding emergency and normal procedures and installing placards to require using the normal door handle instead of the jettison handle for the RH side sliding door. Alternatively, this proposed AD would allow removing the hoist arm instead of installing the placards.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires either removing the hoist arm or prohibiting use of the RH sliding door jettison handle by revising the RFM and installing placards. This proposed AD would require revising the applicable RFM for your helicopter regardless of whether the hoist arm is removed.

Interim Action

The FAA considers this proposed AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this proposed AD would affect 36 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the RFM for your helicopter would take about 1 work-hour for an estimated cost of $85 per helicopter or $3,060 for the U.S. fleet.

Installing the placards would take about 1 work-hour for an estimated cost of $85 per helicopter or $3,060 for the U.S. fleet. Alternatively, removing the hoist arm would take about 1 work-hour for an estimated cost of $85 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2020–0026; Product Identifier 2018–SW–052–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters, certificated in any category, with a hoist arm and with right-hand (RH) side lateral sliding plug door (sliding door) reinforced bracket modification (MOD) 0726841 installed.

Note 1 to paragraph (a) of this AD: Airbus Helicopters reinforced bracket MOD 0726841 may also be identified as sliding door median fitting reinforcement MOD 07.26841.

(b) Unsafe Condition

This AD defines the unsafe condition as interference between the hoist arm and the reinforced bracket resulting in failure of the sliding door to jettison. This condition could prevent helicopter occupants from evacuating the helicopter during an emergency.

(c) Comments Due Date

The FAA must receive comments by March 13, 2020.

(d) Compliance

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

(e) Required Actions

(1) Within 10 hours time-in-service:

(i) Revise the Rotorcraft Flight Manual for your helicopter by inserting the Emergency Procedures page and the Normal Procedures page applicable to your helicopter model and configuration from Appendix 4.C. Flight Manual of Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. 01.00.89, Revision 1, dated June 28, 2018 (EASB 01.00.89), or Airbus Helicopters EASB No. 04A014, Revision 1, dated June 28, 2018 (EASB 04A014). Inserting a different document with information identical to that in Appendix 4.C. Flight Manual of EASB 01.00.89 or EASB 04A014 is acceptable for compliance with the requirements of this paragraph.

(ii) Cover existing placards for each RH sliding door in accordance with Appendix 4.B. Masking Tapes and Labels (RH lateral sliding door) of EASB 01.00.89 or EASB 04A014.

(iii) Install new placards in accordance with Appendix 4.A. Labels and Appendix 4.B. Masking Tapes and Labels (RH lateral sliding door) of EASB 01.00.89 or EASB 04A014.

(2) After complying with paragraph (e)(1) of this AD, each time the hoist arm is removed from the helicopter, you may remove the markings and placards that are required by paragraphs (e)(1)(ii) and (iii) of this AD. Before the hoist arm is re-installed, you must re-install the markings and placards that are required by paragraphs (e)(1)(ii) and (iii) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

(1) Airbus Helicopters Service Bulletin (SB) No. AS332–52.00.43 and SB No. EC225–52–008, both Revision 0 and dated June 23, 2015, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2018–0140–E, dated June 29, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5200, Doors.

Issued in Fort Worth, Texas, on February 4, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02711 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0090; Product Identifier 2019–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all 328 Support Services GmbH Model 328–300 airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 30, 2020.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0090.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0090; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3228; email: *todd.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0090; Product Identifier 2019–NM–196–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0271, dated October 30, 2019 (''EASA AD 2019–0271'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all 328 Support Services GmbH Model 328–300 airplanes.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address the potential failure of parts, which could lead to reduced control of the airplane; and to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. See the MCAI for additional background information.

Relationship Between This Proposed AD and Certain Other ADs

This NPRM would not supersede AD 2009–01–06 R1, Amendment 39–16082 (74 FR 57411, November 6, 2009) (''AD 2009–01–06 R1'') and AD 2012–01–08, Amendment 39–16290 (77 FR 3583, January 25, 2012) (''AD 2012–01–08''). Rather, the FAA has determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. AD 2009–01–06 R1 requires modifying the electrical wiring of the fuel pumps by installing insulation at the flow control and shut-off valves, and other components of the environmental control system; and revising the existing maintenance or inspection program, as applicable, to incorporate new inspections of the fuel tank system. AD 2012–01–08 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This NPRM would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2009–01–06 R1, and all requirements of AD 2012–01–08 for Model 328–300 airplanes only.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0271 describes airworthiness limitations for certification maintenance requirements that include, among other items, safe life limits and fuel tank system limitations.

This material is reasonably available because the interested parties have access to it through their normal course

of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0271 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0271 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0271 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0271 that is required for compliance with EASA AD 2019–0271 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0090 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's new process, which uses MCAI ADs as the primary source of information for compliance with corresponding FAA ADs, has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that specify the incorporation of airworthiness limitation documents.

Although the format of the airworthiness limitation ADs using the new process is different than the FAA's existing format for airworthiness limitation ADs, the FAA requirements are the same: Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document.

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitation (CDCCLs)'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2020–0090; Product Identifier 2019–NM–196–AD.

(a) Comments Due Date

The FAA must receive comments by March 30, 2020.

(b) Affected ADs

This AD affects the following ADs:

(1) AD 2009–01–06 R1, Amendment 39–16082 (74 FR 57411, November 6, 2009) (''AD 2009–01–06 R1'').

(2) AD 2012–01–08, Amendment 39–16920 (77 FR 3583, January 25, 2012) (''AD 2012–01–08'').

(c) Applicability

This AD applies to all 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–300 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential failure of parts, which could lead to reduced control of the airplane; and to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0271, dated October 30, 2019 (''EASA AD 2019–0271'').

(h) Exceptions to EASA AD 2019–0271

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0271 do not apply to this AD.

(2) Where paragraph (3) of EASA AD 2019–0271 specifies a compliance time of ''Within 12 months'' after its effective date to ''revise the approved AMP,'' this AD requires ''revising the existing maintenance or inspection program, as applicable'' to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2019–0271 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0271 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0271, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0271 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0271 does not apply to this AD.

(i) Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitation (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0271.

(j) Terminating Action for Other ADs

(1) Accomplishing the maintenance or inspection program revision required by paragraph (g) of this AD terminates all requirements of AD 2009–01–06 R1.

(2) Accomplishing the maintenance or inspection program revision required by paragraph (g) of this AD terminates all requirements of AD 2012–01–08 for Model 328–300 airplanes only.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or 328 Support Services GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) For information about EASA AD 2019–0271, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0090.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3228; email: *todd.thompson@faa.gov.*

Issued on February 3, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–02740 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1109; Product Identifier MCAI–2019–00115–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent XWB–75, XWB–79, XWB–79B, and XWB–84 turbofan engines. This proposed AD was prompted by analysis by the manufacturer of the low-pressure compressor (LPC) outlet guide vane (OGV) assembly and LPC OGV outer mount ring assembly. The analysis predicted that when the front engine mount is in the fail-safe condition, the most highly stressed LPC OGV outer mount ring assembly has a life that could be substantially less than one shop visit interval. This proposed AD would require initial and repetitive inspections of the OGV outer mount ring assembly and, depending on the results of the inspections, possible replacement of the OGV outer mount ring assembly. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 30, 2020.

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

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

For service information identified in this NPRM, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1109; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: *Stephen.L.Elwin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1109; Product Identifier MCAI–2019–00115–E'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2019–0234, dated September 19, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> The purpose of the engine mount is to position the engine relative to the pylon and to transfer all loads and rotational moments between the engine and pylon. The front engine mount support structure (EMSS) consists of the low pressure compressor (LPC) outlet guide vane (OGV) assembly and OGV outer mount ring assembly. Revised analysis of these parts, when the front engine mount (FEM) is engaged in the fail-safe condition, has now been undertaken using more advanced modelling techniques. This analysis predicts that, once the FEM is in the fail-safe condition, the most highly stressed LPC OGV has a life that could be substantially less than one shop visit interval.
>
> This condition, if not detected and corrected, could lead to failure of the EMSS, possibly resulting in engine separation and reduced control of the aeroplane.
>
> To address this potential unsafe condition, Rolls-Royce introduced inspections to protect against the FEM entering the failsafe condition following a failure of the OGV outer mount ring assembly lugs, and published the NMSB to provide instructions.
>
> For the reason described above, this [EASA] AD requires repetitive inspections of the OGV outer mount ring assembly lug fillet area and, depending on findings, accomplishment of applicable corrective action(s).

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1109.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent XWB 72–AK188, Revision 2, dated December 17, 2019. The NMSB describes procedures for performing fluorescent penetrant inspections (FPIs) of the LPC OGV outer mount ring assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require initial and repetitive FPIs of the LPC OGV outer mount ring assembly, and depending on the results of the inspections, possible replacement of the OGV outer mount ring assembly.

Differences Between This Proposed AD and the Service Information

RR Alert NMSB Trent XWB 72–AK188, Revision 2, dated December 17, 2019, identifies a more immediate

compliance time for RRD Trent XWB turbofan engine models with engine serial numbers (ESNs) 21021, 21032, 21033, 21038, 21041, 21043, 21044, 21065, 21088, and 21188. This proposed AD does not include this more immediate compliance time for these RRD Trent XWB turbofan engine models as they are not installed on aircraft in the U.S. registry.

Costs of Compliance

The FAA estimates that this proposed AD affects 26 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
FPI the LPC OGV outer mount ring assembly	3 work-hours × $85 per hour = $255	$0	$255	$6,630

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the LPC OGV outer mount ring assembly (KH10678).	8 work-hours × $85 per hour = $680	$2,418,121	$2,418,801

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd. & Co KG: Docket No. FAA–2019–1109; Product Identifier MCAI–2019–00115–E.

(a) Comments Due Date

The FAA must receive comments by March 30, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD) (Type Certificate Previously Held by Rolls-Royce plc) Trent XWB–75, XWB–79, XWB–79B, and XWB–84 turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7120, Engine Mount Section.

(e) Unsafe Condition

This AD was prompted by analysis by the manufacturer of the low-pressure compressor (LPC) outlet guide vane (OGV) assembly and OGV outer mount ring assembly. The analysis predicted that when the front engine mount is in the fail-safe condition, the most highly stressed LPC OGV outer mount ring assembly has a life that could be substantially less than one shop visit interval. The FAA is issuing this AD to prevent failure of the front engine mount support structure. The unsafe condition, if not addressed, could result in engine separation, reduced control of the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected RRD Trent XWB turbofan engines with 1,700 flight cycles since new (FCSN) or greater as of the effective date of this AD:

(i) Within 300 flight cycles (FC) after the effective date of this AD, perform a fluorescent penetrant inspection (FPI) of the LPC OGV outer mount ring assembly.

(ii) Use Accomplishment Instructions, paragraph 3.A. or 3.B., as applicable, of Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent XWB 72–AK188, Revision 2, dated December 17, 2019, to perform the FPI of the LPC OGV outer mount ring assembly.

(iii) Thereafter, perform repetitive FPIs of the LPC OGV outer mount ring assembly within 1,000 FC after the previous inspection.

(2) For affected RRD Trent XWB turbofan engines with fewer than 1,700 FCSN as of the effective date of this AD:

(i) Before exceeding 2,000 FCSN after the effective date of this AD, perform an FPI of the LPC OGV outer mount ring assembly.

(ii) Use Accomplishment Instructions, paragraph 3.A. or 3.B., as applicable, of RR Alert NMSB 72–AK188, Revision 2, dated December 17, 2019, to perform the FPI of LPC OGV outer mount ring assembly.

(iii) Thereafter, perform repetitive FPIs of the LPC OGV outer mount ring assembly within 1,000 FC after the previous inspection.

(3) If, during any FPI required by paragraph (g)(1) or (2) of this AD, an LPC OGV outer mount ring assembly discrepancy is detected, as defined in the Accomplishment Instructions, paragraph 3.A or 3.B, of RR Alert NMSB 72–AK188, Revision 2, dated December 17, 2019, repeat the FPI within the interval specified in Accomplishment Instructions, paragraph 3.A. or 3.B., of RR Alert NMSB 72–AK188, Revision 2, dated December 17, 2019.

(4) If, during any FPI required by paragraphs (g)(1) and (2) of this AD, an LPC OGV outer mount ring assembly is rejected as a result of the FPI, as defined in the Accomplishment Instructions, paragraph 3.A or 3.B, of RR Alert NMSB 72–AK188, Revision 2, dated December 17, 2019:

(i) Before further flight, replace the LPC OGV outer mount ring assembly with a part eligible for installation.

(ii) Thereafter, perform repetitive FPIs of the LPC OGV outer mount ring assembly within 1,000 FC of the previous inspection.

(h) No Reporting Requirement

The reporting requirements in the Accomplishment Instructions, paragraph 3, of RR Alert NMSB Trent XWB 72–AK188, Revision 2, dated December 17, 2019, are not required by this AD.

(i) Credit for Previous Actions

You may take credit for the initial and repetitive FPIs that are required by paragraphs (g)(1) and (2) of this AD if you performed the FPIs before the effective date of this AD using RR Alert NMSB Trent XWB 72–AK188, Revision 1, dated September 20, 2019, or Initial Issue, dated August 13, 2019.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: *Stephen.L.Elwin@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0234, dated September 19, 2019, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–1109.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on February 6, 2020.

Robert J. Ganley,

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

[FR Doc. 2020–02724 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59 and 64

[Docket ID FEMA–2019–0016]

RIN 1660–AA92

Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to make two changes to its regulations regarding publication requirements of community eligibility status information under the National Flood Insurance Program (NFIP). First, FEMA proposes to replace outdated regulations that require publication of community loss of eligibility notices in the **Federal Register** with a requirement that FEMA publish this information on the internet or by another comparable method. Second, FEMA proposes to replace its requirement that FEMA maintain a list of communities eligible for flood insurance in the Code of Federal Regulations with a requirement that FEMA publish this list on the internet or by another comparable method.

DATES: Comments must be received on or before April 13, 2020.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2019–0016, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Adrienne Sheldon, Supervisory Emergency Management Specialist, Floodplain Management Division, Federal Insurance & Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, 202–212–3966, or (email) *AdrienneL.Sheldon@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

We encourage you to participate in this rulemaking by submitting

comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street SW, Washington, DC 20472–3100.

Public Meeting: We do not plan to hold a public meeting, but you may submit a request for one at the address under the **ADDRESSES** section explaining why one would be beneficial. If FEMA determines that a public meeting would aid this rulemaking, it will hold one at a time and place announced by a notice in the **Federal Register.**

II. Background

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 *et seq.,* authorizes the Administrator of FEMA to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of property arising from floods in the United States.[1] Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.[2] The statute authorizes FEMA to develop land use criteria consistent with requirements laid out in the NFIA and to encourage the adoption and enforcement of State and local measures implementing these criteria.[3] FEMA regulations governing community eligibility for participation in the NFIP are located at 44 CFR parts 59, 60, and 64.

NFIP regulations at 44 CFR 60.3, 60.4, and 60.5 contain community eligibility requirements for flood insurance. If a community fails to demonstrate to FEMA that it meets these requirements, or decides to withdraw from the NFIP, FEMA may initiate probation, suspension, or withdrawal procedures as described in 44 CFR 59.24. In the case of an unintentional loss of eligibility, for instance if a community is suspended for failing to enforce its floodplain regulations, FEMA notifies the community of the upcoming loss directly and gives the community an opportunity to correct the deficiency that triggered the procedures. In cases of both intentional and unintentional loss of eligibility, FEMA publishes a notice of the upcoming loss of eligibility in the **Federal Register** as required by 44 CFR 59.24.

NFIP regulations at 44 CFR 64.6 state that flood insurance under the NFIP is authorized for the communities set forth under Section 64.6 of the regulations. Due to the large number of communities eligible for flood insurance and the relative frequency to changes to community eligibility, maintaining a list of communities in FEMA's regulations is not feasible; however, FEMA meets this requirement by publishing the updated list of communities through periodic final rules in the **Federal Register.** As explained in more detail below, FEMA last published an updated list in the **Federal Register** in August 2006.

III. Proposed Rule: Section 59.24 Community Loss of Eligibility Notices and Section 64.6 List of Communities Eligible for Flood Insurance

FEMA proposes to make two changes to these regulations to reduce costs and streamline notice procedures. First, FEMA proposes to remove the requirement contained in 44 CFR 59.24(a), (c), (d), and (e) that community loss of eligibility notices be published in the **Federal Register,** and add a requirement that FEMA publish the notices on the internet or by another comparable method. Second, FEMA proposes to revise 44 CFR 64.6 to remove the requirement that FEMA maintain a list of communities eligible for flood insurance under the NFIA in the CFR. Instead, the proposed revision would require publication and maintenance of the list on the internet or through another comparable method. These proposed changes would not impact the other notification requirements found in 44 CFR 59.24. For example, in cases of involuntary loss of eligibility, FEMA provides a minimum of three written notices to a community's chief executive officer or other designee over a several month period prior to the anticipated loss of eligibility, and provides the community with an opportunity to correct the defect. No substantive right of communities or stakeholders would be impacted by this change.

The proposed changes are consistent with the NFIA. The NFIA directs FEMA to certify communities for receipt of flood insurance under the NFIP[4] and lays out standards for land management,[5] but leaves community certification and decertification procedures, as well as notification procedures, to FEMA's discretion. Consequently, these proposed changes do not conflict with the NFIA.

Sections § 59.24 and § 64.6 are outdated, and were promulgated prior to the widespread use of the internet. FEMA initially adopted the **Federal Register** publication requirement contained in § 59.24 in 1971.[6] Similarly, in 1971 FEMA substantially adopted the requirement in § 64.6 to maintain and publish the list of eligible communities,[7] with the current language adopted in 1976.[8]

Section 59.24

Publishing the community loss of eligibility notices electronically, in conjunction with the Community Status Book, would increase the public visibility and accessibility of these notices, as it is easier for the public to access the eligibility notices in a single electronic format than it is for the public to find a **Federal Register** notice specific to a particular community. In addition, publishing community loss of eligibility notices in the **Federal Register** requires FEMA to expend additional financial resources compared to publication in an electronic format. Removing this requirement will provide cost savings to the agency.

[1] See 42 U.S.C. 4011(a).

[2] See 42 U.S.C. 4022(a)(1).

[3] See 42 U.S.C. 4102(c).

[4] See 42 U.S.C. 4022(a)(1).

[5] See 42 U.S.C. 4102(c).

[6] See 36 FR 18,175 and 18,179, discussing community loss of eligibility procedures, then located at 24 CFR 1909.24. At 18,175, the rulemaking notes that: ''A new § 1909.24 has been added to clarify the manner in which suspensions of flood insurance eligibility will be handled . . .'' No further explanation is provided, and loss of eligibility is not addressed in the associated notice of proposed rulemaking, located at 36 FR 11,109.

[7] See 36 FR 24,768, § 1914.4.

[8] See 41 FR 46,987, § 1914.6.

If these proposed regulatory changes are adopted, FEMA plans to store the notices on its website, so that they are easily available to all interested parties. Although FEMA has not yet created a digital repository to store these notices, FEMA anticipates making a link to these notices that is easily accessible from the Community Status Book. FEMA's objective in the digital accessibility of these notices is to make the notices easy for users to find, and FEMA welcomes suggestions from the public on the best place on its website to house this database of community eligibility notices.

FEMA proposes to store notices on its public facing website for a minimum of 1 year after the notices are issued. FEMA welcomes input from the public on whether a year is sufficient, or if a longer time-period would be beneficial. After removal from FEMA's public-facing website, FEMA will retain copies of the notices in accordance with all statutory and regulatory requirements.

Section 64.6

Section 64.6 directs FEMA to maintain a list of communities eligible for flood insurance under the NFIA in the CFR. FEMA maintains an online Community Status Book containing this information. The Community Status Book provides a list of which communities are, and are not, eligible for flood insurance under the NFIP. The Community Status Book is available for public viewing on the FEMA website at *https://www.fema.gov/national-flood-insurance-program-community-status-book.* The Community Status Book is organized alphabetically by state and community, so a stakeholder can easily identify the eligibility status of his or her community. Because the information directed by § 64.6 is already being published in the Community Status Book, the separate list directed by § 64.6 is duplicative and thus no longer needed.

FEMA has not updated the eligible community list, as directed by § 64.6, since August 28, 2006 [9] because of the list's overlap with the Community Status Book and the cost of publishing the updated lists in the **Federal Register.** Instead, in an effort to comply with § 64.6, FEMA generates quarterly reports identifying changes to the list of eligible communities. These quarterly reports are available upon stakeholder request, but are not otherwise published. FEMA generates these reports each quarter in order to partially comply with **Federal Register** publication requirements. Generating these reports requires FEMA to take the information contained in each notice and re-format and consolidate the content into one list. Moving the list updates fully online would eliminate the time and effort associated with generating these reports, yielding cost savings for FEMA. FEMA proposes to revise § 64.6 to require that the agency publish and maintain community eligibility information on the internet or through another comparable method, as is currently being done through the Community Status Book, because full compliance with § 64.6 would be burdensome to the agency and would not provide additional community eligibility status information beyond what is currently maintained in the Community Status Book.

Transition

To aid in the transition to the new form of publication, FEMA would publish brief notices once a month in the **Federal Register** for 6 months after the effective date of the final rule, alerting stakeholders to the change, and letting them know where to go to access community status information.

IV. Regulatory Analysis

A. Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

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

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

1. Need for Regulatory Action

Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.[10] Pursuant to this statutory direction, FEMA has adopted regulations governing community eligibility for participation in the NFIP at 44 CFR parts 59, 60, and 64. These regulations include requirements that a community follow certain steps to retain eligibility for the NFIP. If a community fails to follow these requirements or decides to withdraw from the NFIP, FEMA initiates loss of eligibility procedures as described in 44 CFR 59.24 and publishes a notice of the upcoming loss of eligibility in the **Federal Register.** In addition, 44 CFR 64.6 states that flood insurance under the NFIP is authorized for communities set forth under Section 64.6 of the regulations, requiring FEMA to maintain a list of eligible communities in the CFR. FEMA proposes to make two changes to the current regulations.

First, FEMA proposes to remove the requirement pursuant to § 59.24(a), (c), (d), and (e) to publish community loss of eligibility notices in the **Federal Register.** In lieu of publication in the **Federal Register,** the proposed rule would require that these notices be published on the internet or by another comparable method. To aid in the transition, FEMA would publish brief notices once a month in the **Federal Register** for 6 months after the effective date of the final rule, alerting stakeholders to the change.

Second, FEMA proposes to remove the requirement pursuant to § 64.6 that FEMA maintain a list of eligible communities in the CFR. In lieu of this requirement, the proposed rule would require FEMA to publish and maintain a list of eligible communities on the internet or through another comparable method.

These two proposed changes would result in reduced FEMA expenditures. The proposed changes to § 59.24 would also provide faster and more user-friendly access to community loss of eligibility information by requiring publication of the notices online instead of in the **Federal Register.** In addition, these changes would direct FEMA to consolidate community status

[9] The last update to § 64.6 in the **Federal Register** was published on August 28, 2006. See 71 FR 50,856. Updates were made regularly until that point in time, with several updates being published each year.

[10] See 42 U.S.C. 4022(a)(1).

information into one location, allowing stakeholders to have more streamlined access to community status-related information.

2. Baseline

Requirement to Publish Community Loss of Eligibility Notices in the **Federal Register**

Community loss of eligibility notices were published a total of 245 times in the **Federal Register** from 2007 to 2016. Based on data from these notices, FEMA calculates that on average, from 2007 to 2016, the notices were published about 25 times per year, rounded to the nearest whole number (245 divided by 10 = 24.5. 24.5 rounded to the nearest whole number = 25).

Requirement to Publish the List of Eligible Communities in the CFR

With respect to the requirement for FEMA to maintain a list of eligible communities in the CFR, FEMA notes that it currently maintains this list online in the Community Status Book rather than in the CFR.[11] In addition, FEMA prepares quarterly reports in an attempt to comply with the publication requirement contained in § 64.6. The quarterly preparation burden is approximately 15 hours per quarter at a cost of $80 per hour, for a total of $4,800 each year (15 × 80 × 4).[12] FEMA has not published the quarterly reports in the CFR since 2006 due to the recurring costs involved.

3. Costs

Community Loss of Eligibility Notices: internet Publication Costs

As a substitute for publishing the required community loss of eligibility notices in the **Federal Register,** the proposed rulemaking would require FEMA to publish community loss of eligibility notices online. FEMA currently maintains a public website (*www.fema.gov*) where similar notices, bulletins, and updates from across the agency are published for public consumption. While there is no direct cost to adding individual web pages or sections to the site, publishing community loss of eligibility notices online would create labor costs for staff who would need to develop a template to format and process the notices for web publication.

FEMA plans an upcoming website re-design that would include more versatile search functionality for the user, a more standardized look and feel, increased search engine optimization, and better capture of meta data. FEMA anticipates the use of this re-design in the analysis of this proposed rulemaking. Development of this publication process for online notices will be labor intensive at the beginning. Once a template is created, each update will be less labor intensive than the current practice.

FEMA staff expect it would take approximately 3 days of labor (24 hours) of a General Schedule (GS) Federal employee in the National Capital Region, at the GS–14 level ($53.68 hourly wage),[13] to establish the publication process under the expected redesign. After the publication process is established, FEMA anticipates that it would take a GS–14 employee approximately thirty minutes per future publication.

The average 25 notices per year would result in a burden to FEMA of $2,860.61 the first year (($53.68 × 1.46) [14] × (24 + (0.5 × 25))) and $979.66 each subsequent year (($53.68 × 1.46) × (0.5 × 25)) for a 10-year total of $11,677.55 (1).

TABLE 1—INTERNET PUBLICATION COSTS

Year	Initial internet publication burden (hours) (a)	Recurrent internet publication burden (hours) (b) (= 0.25 × 25)	Internet publication cost (c) = (a × b) × ($59.91 × 1.46)
1	24	12.5	$2,861
2		12.5	980
3		12.5	980
4		12.5	980
5		12.5	980
6		12.5	980
7		12.5	980
8		12.5	980
9		12.5	980
10		12.5	980
Total	24	12.5	11,678

Community Loss of Eligibility Notices: Transition/Phase-Out Costs

Upon the issuance of the final rule, FEMA would aid in the transition from the publication of community loss of eligibility notices in the **Federal Register** to their posting on FEMA's website by publication of transitional announcements in the **Federal Register.** These announcements would alert stakeholders of the new location of these notices and they would be concise and tailored to notify stakeholders of the FEMA web address where the

[11] The Community Status Book is available for public viewing at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

[12] Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

[13] Office of Personnel Management, 2017, Washington-Baltimore-Arlington-DC–MD–VA–WV–PA, Hourly Rate, GS–14, Step 1. Available at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/DCB_h.aspx.*

[14] Bureau of Labor Statistics, *Employer Costs for Employee Compensation,* March, 2017, Table 1 Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. Available at *https://www.bls.gov/news.release/archives/ecec_06092017.pdf.* The per hour benefits multiplier is calculated by dividing total compensation for all workers ($35.28) by wages and salaries for all workers ($24.10), which yields a per hour benefits multiplierof 1.46. ($35.28 ÷ $24.10 = 1.4639). Fully-loaded wage rates are calculated by multiplying the per hour benefits multiplier by the applicable wage rate (1.46 per hour benefits multiplier × $53.68 hourly wage rate = $78.37 fully-loaded hourly wage).

community loss of eligibility notices can be found. FEMA expects these transitional announcements to publish once a month for a 6-month phase-out period following the effective date of the rule.

Community Status Report: Cost Savings

FEMA proposes to remove the requirement pursuant to § 64.6 that FEMA maintain an updated list of eligible communities in the CFR. FEMA does not currently publish updates to the list of communities eligible for flood insurance in the CFR and already maintains an online Community Status Book containing this information.[15] FEMA prepares quarterly reports on the current lists of communities in an attempt to comply with the regulation. These reports are available upon stakeholder request, although they are not published. Modifying the regulations to eliminate the requirement to publish the list in the CFR in favor of the list already maintained on FEMA's website (the Community Status Book) would eliminate preparation of these lists and save the quarterly preparation burden of approximately 15 hours per quarter at $80 per hour,[16] yielding a cost savings of $4,800 ($80 × 15 × 4) annually. This revision would save FEMA costs without affecting policyholders or other stakeholders.

TABLE 2—NET COST SAVINGS

Year	Internet publication cost	Community status report cost savings	Net cost savings	NPV at 3%	NPV at 7%
1	$2,861	− $4,800	− $1,939	− $1,883	− $1,813
2	980	−4,800	−3,820	−3,601	−3,337
3	980	−4,800	−3,820	−3,496	−3,119
4	980	−4,800	−3,820	−3,394	−2,915
5	980	−4,800	−3,820	−3,295	−2,724
6	980	−4,800	−3,820	−3,199	−2,546
7	980	−4,800	−3,820	−3,106	−2,379
8	980	−4,800	−3,820	−3,016	−2,223
9	980	−4,800	−3,820	−2,928	−2,078
10	$980	−4,800	−3,820	−2,843	−1,942
Total	11,678	−48,000	−36,322	−30,762	−25,075
Annualized				−3,606	−3,570

The net cost savings expected from this rulemaking are presented in 2. The up-front transition costs are only expected to take place in Year 1, thus the cost savings expected over the subsequent years are not impacted. For the 10-year period analyzed, the estimated quantified discounted total cost savings at 7 and 3 percent are $25,075 (annualized at $3,570) and $30,762 (annualized at $3,606), respectively.

4. Benefits

Revising 59.24 to eliminate the **Federal Register** publication requirements would allow FEMA to be more agile and timely in updating community status information. In contrast, continued updates through the **Federal Register** would be slower, more expensive to FEMA, and present the information in a format that is less accessible to stakeholders.

In addition, making this change to 59.24, and updating FEMA's regulations in 64.6, would locate all information related to community status and eligibility for flood insurance in one place that is well known by stakeholders. This consolidation would improve the ease and efficiency of locating community status and eligibility information for stakeholders and for FEMA.

5. Transfers

Transfer payments are monetary payments from one group to another that do not affect total resources available to society. There are no anticipated transfer payments resulting from the proposed rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FEMA does not believe this proposed rule would have a significant economic impact on a substantial number of small entities. Nonetheless, FEMA is publishing this IRFA to aid the public in commenting on the potential small entity impacts of the proposed requirements in this NPRM. FEMA invites all interested parties to submit data and information regarding the potential direct costs on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process.

The Regulatory Flexibility Act requires an IRFA to contain certain analyses. First, an IRFA describes the reasons why the action by the agency is being considered. Second, it must succinctly state the objectives of, and legal basis for, the proposed rule. Third, it must describe—and, where feasible, estimate the number—of small entities to which the proposed rule would apply. Fourth, it must describe the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record. Fifth, it must identify, to the extent practicable, all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. Lastly, it must

[15] The Community Status Book is available for public viewing at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

[16] Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

describe significant alternatives to the rule.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

FEMA proposes to remove the **Federal Register** publication requirement from § 59.24, and instead require that these notices be published on the internet or by another comparable method. In addition, FEMA proposes to modify § 64.6 to require FEMA to publish and maintain a list of eligible communities online or through another comparable method. These changes would result in reduced FEMA expenditures and provide faster and more user-friendly publications.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 *et seq.,* authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of property arising from floods in the United States.[17] Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.[18] The statute gives the FEMA Administrator authority to develop land use criteria consistent with requirements laid out in NFIA and to encourage the adoption and enforcement of State and local measures implementing these criteria.[19] Pursuant to this statutory direction, FEMA has adopted regulations governing community eligibility for participation in the NFIP at 44 CFR parts 59 and 60, and 64.

FEMA proposes to make two changes to regulations to cut costs for FEMA and streamline notice procedures. First, FEMA proposes to remove the requirement from § 59.24 that notices regarding loss of eligibility be published in the **Federal Register**, and instead proposes requiring that theses notices be published on the internet or through another comparable method. Second, FEMA proposes to revise § 64.6, which directs FEMA to maintain a list of eligible communities in the CFR and proposes that FEMA instead publish and maintain a list of eligible communities online or through another comparable method. This proposed rule would not impact other forms of notice to communities, nor would it impact the substantive rights of communities or stakeholders.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

''Small entity'' is defined in 5 U.S.C. 601. The term ''small entity'' can have the same meaning as the terms ''small business,'' ''small organization'' and ''small governmental jurisdiction.'' Section 601(3) defines a ''small business'' as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated and is not dominant in its field of operation. Section 601(4) defines a ''small organization'' as any not-for-profit enterprises that are independently owned and operated and are not dominant in their field of operation. Section 601(5) defines ''small governmental jurisdictions'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

This rule does not directly regulate any small entities. As previously described, this rule only changes how FEMA shares loss of community eligibility notices and community status information. FEMA used the US Census Bureau's 2012 Census of Government[20] to estimate the number of small governmental jurisdictions in the United States. According to the U.S. Census, there are 38,910 jurisdictions consisting of counties, municipalities and townships within the United States. Among these, 37,132 would qualify as small governmental jurisdictions, which would equate to a 95.4 percent of all U.S. governmental jurisdictions. Applying this percentage to the 22,269 communities currently participating in the National Flood Insurance Program (NFIP)[21] results in an estimated 21,245 small governmental jurisdictions.[22] Individual policyholders are not considered small entities.

FEMA seeks comments on the methodology and assumptions used to determine the number of small entities impacted by this proposed rule.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

Currently, FEMA anticipates this rule would not impose any direct costs on small entities and anticipates that the proposed rule would allow easier access to information about flood insurance eligibility. This proposed rulemaking does not consist of any substantive policy changes. FEMA does not anticipate an increase in administrative burdens to small entities from this proposed rule.

5. An Identification, to the Extent Practicable, of all Relevant Federal Rules Which may Duplicate, Overlap, or Conflict With the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Given that this rule is largely procedural in nature, with no direct costs on small entities, no less burdensome alternatives to the proposed rule are available. In the absence of this proposed rule, small entities would continue to receive the loss of community eligibility notices through **Federal Register** publications. Community status information would continue to be maintained on FEMA's website.

FEMA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FEMA will consider all comments received in the public comment process. After reviewing the public comments, FEMA may certify the final rule as not having a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–

[17] See 42 U.S.C. 4011(a).

[18] See 42 U.S.C. 4022(a)(1).

[19] See 42 U.S.C. 4102(c).

[20] See U.S. Census Bureau, ''2012 Census of Governments, Local Governments by Type and State 2012,'' Table 2, September 26, 2013, available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.*

[21] The number of NFIP communities is derived from ''The National Flood Insurance Program Community Status Book,'' Page 478, located at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

[22] The number of small government jurisdictions equals 22,269 multiplied by 0.954.

1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking would not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of $100 million (adjusted annually for inflation) or more in any one year as a result of a Federal mandate, and it would not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. FEMA collects community information for the purposes of application to the NFIP under OMB Control Number 1660–0004, Application for Participation in the National Flood Insurance Program (NFIP).[23] However, FEMA has determined that this rulemaking does not impact this information collection or any other collection of information as defined by the Act.

D. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with Department of Homeland Security privacy compliance policy, FEMA has completed a Privacy Threshold Analysis for this proposed rule. DHS determined that this proposed rule is not privacy sensitive, as it does not affect the information collected about an individual. FEMA's original collection and maintenance of NFIP related personally identifiable information has coverage under the DHS/FEMA–003—National Flood Insurance Program Files, 79 FR 28747 (May 19, 2014) System of Records Notice and the DHS/FEMA/PIA—011 National Flood Insurance Program Information Technology System Privacy Impact Assessment. This proposed rule does not impact this existing system of record, create a new system of record, nor impact the current Privacy Impact Assessment. Therefore, this proposed rule does not require coverage under an existing or new Privacy Impact Assessment or System of Records Notice.

E. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

Although Tribes that meet the NFIP eligibility criteria can participate in the NFIP in the same manner as communities,[24] FEMA has reviewed this proposed rule under Executive Order 13175 and has determined that this proposed rule 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. This proposed rule modernizes notice requirements for community loss of eligibility information and community status information; therefore, FEMA does not expect the regulatory changes in this proposed rule to substantially or disproportionately affect Indian Tribal governments acting as communities under the NFIP.

F. Executive Order 13132, Federalism

Executive Order 13132, ''Federalism,'' 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that 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.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

[23] See 44 CFR 59.22 for a description of the information collected.

[24] Although the NFIP does not explicitly reference Tribal Governments, FEMA includes Tribal nations in its definition of a community. See 44 CFR 59.1.

distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rulemaking seeks to modernize notice requirements for community loss of eligibility information and community status information under the NFIP; therefore, the rule does not impact the substantive rights, roles, or responsibilities of States, and does not limit State policymaking discretion.

G. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This notice of proposed rulemaking meets Categorical Exclusion A3(d), ''Those that interpret or amend an existing regulation without changing its environmental effect''.

H. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule is not a ''major rule'' within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

44 CFR Part 59

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 64

Flood insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR parts 59 and 64 as follows:

PART 59—GENERAL PROVISIONS

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. Amend § 59.24 by:
■ a. Revising the fourth sentence of paragraph (a);
■ b. Revising the fourth sentence of paragraph (c);
■ c. Revising the second sentence of paragraph (d);
■ d. Revising the second sentence of paragraph (e).

The revisions read as follows:

§ 59.24 Suspension of Community Eligibility.

(a) * * * If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication of the community's loss of eligibility for the sale of flood insurance on the internet or by another comparable method, such suspension to become effective upon the expiration of the six month period. * * *

* * * * *

(c) * * * If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. * * *

(d) * * * If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. * * *

(e) * * * Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. * * *

* * * * *

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

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

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

■ 4. Revise § 64.6 to read as follows:

§ 64.6 List of eligible communities.

FEMA will maintain a list of communities eligible for the sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001–4128). This list will be published and maintained on the internet or through another comparable method.

* * * * *

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02510 Filed 2–11–20; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 28, 32, 52, and 53

[FAR Case 2017–003; [Docket No. FAR–2017–0003, Sequence No. 1]

RIN 9000–AN39

Federal Acquisition Regulation: Individual Sureties

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 to change the kinds of assets that individual sureties must pledge as security for their individual surety bonds.

DATES: Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before April 13, 2020 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2017–003 by any of the following methods:

- *Regulations.gov*: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2017–003'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Comment Now'' that corresponds with ''FAR Case 2017–003.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2017–003'' on your attached document.
- *Mail:* General Services Administration, Regulatory-Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR case 2017–003'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite ''FAR Case 2017–003''.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require that a pledge of assets given by an individual surety consist only of eligible obligations. This FAR change will implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92), codified at 31 U.S.C. 9310, Individual Sureties.

The revisions modify existing coverage regarding the use of individual sureties in support of a Government bonding requirement. FAR subpart 28.2 requires agencies to obtain adequate security for bonds when bonds are used with a contract. A corporate or individual surety is an acceptable form of security for a bond. Corporate sureties are vetted by the Department of the Treasury to ensure they are sufficiently capitalized and are listed on Department of the Treasury's Listing of Approved Sureties (Treasury Department Circular 570). Individual sureties are not listed on Treasury Department Circular 570; currently contracting officers determine if an individual surety is acceptable.

This FAR rule revises the types of acceptable assets an individual surety may pledge and requires the Department of the Treasury, Bureau of the Fiscal Service to review those assets to ensure they meet established eligibility requirements.

Under 31 U.S.C. 9310, when Federal law permits acceptance of a surety bond from a surety not subject to 31 U.S.C. 9305 and 9306 (*i.e.,* an individual surety that is not a corporate surety), the individual surety must pledge assets that are eligible obligations. Eligible obligations are public debt obligations of the United States Government. The requirements of 31 U.S.C. 9310 are intended to strengthen the assets pledged by individual sureties, thereby mitigating risk to the Government.

II. Discussion and Analysis

This rule proposes to amend FAR part 28, and its associated clause at 52.228–11, and adds a new provision at 52.228–XX. The changes contained in the proposed rule are as follows:

1. A new section title is added at FAR 28.203, Individual sureties.

2. Existing section 28.203 is redesignated as 28.203–1, and revised as described below.

3. FAR 28.203–1(a). The language requiring contracting officers to determine the acceptability of individuals proposed as sureties is revised, and moved to FAR 28.203–1(c). The process oriented language at FAR 28.203–1(c), while not specifically required by section 874 of the NDAA for FY 2016, is necessary for its implementation under the FAR, and aligns well with the Department of the Treasury guidance and instructions. In addition, language is added to require that assets pledged by an individual surety meet eligibility requirements established by the Department of the Treasury, Bureau of the Fiscal Service. The revised text refers to the Department of the Treasury list of acceptable assets, available at *https://www.treasurydirect.gov/instit/statreg/collateral/2018Final225ListofAcceptable Collateral.pdf.*

4. FAR 28.203–1(b). The paragraph is revised, and broken out into four subparagraphs.

- 28.203–1(b)(1). The three types of bonds are specifically cited within the text: Bid bond (Standard Form 24), performance bond (Standard Form 25), and payment bond (Standard Form 25A). Though this addition is not related to section 874 of the NDAA for FY 2016 requirements, stating the three types of bonds enables the reader to quickly see the three bond types without having to look elsewhere.
- 28.203–1(b)(2). The existing text referring to the unencumbered value of the asset exclusive of all outstanding pledges for other bond obligations, is changed as follows: ''The net adjusted value of unencumbered assets is their market value minus the margin.'' This change clarifies the intent and context of the valuation requirement. The phrase ''market value minus the margin'' is added to clarify that pledged assets are subject to a percentage reduction (''margin'') from the market value to account for a risk premium. The new text refers to the Department of the Treasury margin tables, which can be viewed by accessing an added hyperlink at *www.treasurydirect.gov.* In addition, the text in this section is clarified to state that the net adjusted value of the pledged assets, when combined, must equal or exceed the penal amount (*i.e.,* face value) of each bond. Though not specifically required

by section 874 of the NDAA, this change aligns with the Department of the Treasury guidance and instructions.

• 28.203–1(b)(3). The name of the Standard Form 28, Affidavit of Individual Surety, is added. This is an administrative change made to meet FAR drafting conventions.

• 28.203–1(b)(4). The phrase ''or contractor'' is added to clarify when bonds are submitted postaward. The phrase ''net adjusted value'' of the assets is added to clarify what is to equal or exceed the penal amount of the bond.

5. New FAR 28.203–1(c) is added to clarify that the pledge of assets by an individual surety shall be submitted to the contracting officer, who will then notify the Department of the Treasury of the existence of the individual surety, the assets to be pledged, and the amount necessary to cover the individual surety bond, *i.e.,* the required amount to be collateralized. If after 3 business days the contracting officer has not received a response from Treasury, the contracting officer may seek assistance from the Director, Bank Policy and Oversight, at 202–504–3502. This section also requires contracting officers to determine whether the individual surety bond is acceptable as to the amount necessary to cover the individual surety bond, based on the asset eligibility and valuation assessment from the Department of the Treasury. The contracting officer will then notify both the offeror or contractor and the individual surety of this determination. These process steps are integral to effective implementation of section 874 requirements in the FAR.

6. New FAR 28.203–1(d) is added to require the contracting officer to request the Department of the Treasury operations support team set up the individual surety asset collateral account for each contract. The requirements for contracting officers to contact the Department of the Treasury about individual sureties are additional responsibilities for contracting officers; however, the Department of the Treasury officials will be providing collateral eligibility and valuation assessment.

7. Current FAR 28.203 paragraphs (e) and (f) are deleted; paragraphs (c) and (d) are redesignated (e) and (f) under the now redesignated FAR section 28.203–1. The now redesignated paragraph 28.203–1(e) changes the text from ''competency review'' to ''Certificate of Competency.'' The now redesignated paragraph 28.203–1(f) allows the contracting officer to permit the contractor to substitute an acceptable surety when Treasury could not assess the asset eligibility and valuation within a reasonable time.

8. Current sections 28.203–1, 28.203–2 and 28.203–3 are deleted; sections 28.203–4 through 28.203–7 are redesignated 28.203–2 through 28.203–5.

9. FAR 28.203–2, Acceptability of Assets, is deleted as the acceptability of assets is governed under the Department of the Treasury regulations and instructions.

10. FAR 28.203–3, Acceptance of Real Property, is deleted as real property is no longer an acceptable form of collateral. As stated previously, this FAR change will implement section 874 of the NDAA for FY 2016 (Pub L. 114–82), which adds 31 U.S.C. 9310, Individual Sureties. 31 U.S.C. 9310 limits the security required for an individual surety bond to eligible obligations, which are described under 31 U.S.C. 9303. Eligible obligations consist of acceptable collateral or eligible collateral. Real Property is not an eligible obligation under 31 U.S.C 9301.

11. The now redesignated FAR section 28.203–2 adds the phrase ''including a revised SF 28'' to clarify that the form must be used when substituting assets. It also adds the phrase ''Following the requirements set forth in 28.203–1'' to make it clear that any substitution of assets is subject to the same requirements as on the assets originally pledged.

12. The now redesignated FAR section 28.203–3 deletes the reference to the Optional Form 90, Release of Lien on Real Property, as real property is not considered an eligible obligation under 31 U.S.C. 9301. At paragraph (a)(1), cross-references are added for the convenience of the reader.

13. The now redesignated FAR section 28.203–4 added at paragraph (a) the prescription for the new provision at 52.228–XX, and modified at paragraph (b) the prescription for the existing clause at 52.228–11 to add the title of the clause.

14. At FAR 28.204(b), the word ''lien'' is deleted and replaced with ''security'' to clarify the meaning of the transaction.

15. A new FAR provision at 52.228–XX is created to distinguish instructions to offerors from instructions to a contractor, by relocating the ''offeror'' language from the existing FAR clause at 52.228–11. The provision addresses the offeror requirements for using an individual surety for a bid guarantee consistent with the text in the now designated FAR 28.203–1.

16. FAR clause 52.228–11 is modified to address contractor requirements for using an individual surety for a performance or payment bond consistent with the text in the now designated 28.203–1.

17. Optional Form 90, Release of Lien on Real Property, is removed as real property is not considered an eligible obligation under 31 U.S.C. 9301. These changes are noted at FAR 28.106–1, the now designated 28.203–3, 53.228, and 53.300(a).

18. Conforming and minor editorial changes were made elsewhere. Cross-references are revised at FAR 19.602–1, 28.102–2(e), 28.204(b), and 32.202–4(c).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

DoD, GSA, and NASA do not intend to change the current policy on the use of bonds for the acquisition of commercial items, including COTS, found at FAR 28.103. FAR 28.103–1(a) states that ''Generally, agencies shall not require performance and payment bonds for other than construction contracts. However, performance and payment bonds may be used as permitted in 28.103–2 and 28.103–3.''

DoD, GSA, and NASA do intend to apply the requirements of this rule to solicitations for contracts valued at or below the SAT. FAR 28.102–1(b) gives an example of when a bond could be required for an acquisition under the SAT. As noted in FAR 28.102–1(b), 40 U.S.C. 3132 requires the contracting officer select two or more payment protections for construction contracts greater than $35,000, but not greater than $150,000, one of the possible protections being a payment bond. Individual sureties may provide security for a payment bond in this situation. DoD, GSA, and NASA intend to determine that it is not in the best interest of the Government to waive the applicability of section 874 below the SAT, because the new requirement will create greater certainty of payment for subcontractors. Applying the rule below the SAT will continue the FAR uniformity in the type of assets allowed to be pledged, whether the acquisition is above or below the SAT.

IV. Expected Impact on the Public

DoD, GSA, and NASA have preliminarily concluded that the proposed rule is regulatory because, as required by law, new requirements are imposed on individual sureties seeking to provide bonds to Federal Government contractors. However, DoD, GSA, and NASA also believe there may be some burden reduction associated with this rule. Because the Government has been

unable to identify other than anecdotal data on the use of individual sureties, public input is sought before a final determination is made on whether the rule is regulatory and whether there is burden reduction.

An individual surety must pledge public debt obligations of the United States Government. The individual surety no longer will be allowed to pledge real estate or assets such as stocks and bonds, as is currently permitted by the FAR. At least one surety company specializing in Federal small business contracting cautioned about the impact of reducing the availability of individual sureties, stating that the ''individual surety is a tool to groom contractors back into corporate surety credit . . . it is the only method to keep small businesses that have credit issues . . . in business.'' Testimony of the Barbour Group before the House Judiciary Subcommittee on Courts, Commercial, and Administrative Law, March 5, 2012.

Information on the use of individual and corporate sureties by Federal contractors and subcontractors is currently not centrally collected, so the percentage of these entities availing themselves of individual sureties that would no longer be accepted under this new rule is unclear. However, there is reason to believe the impact is small, relative to the total amount of construction contract spending for which individual sureties could be used historically. Specifically, DoD, GSA, and NASA attempted to determine all of the awards that contained the FAR clause at 52.228–11, Pledges of Assets, with a total obligated amount of over $35,000. This clause, which would be amended by this rulemaking, has historically allowed pledges of assets from individual sureties. Only information from DoD was available to determine which contracts contained this particular FAR clause. This was thought to be a representative, if conservative, sample, as DoD contracts account for 63 percent of all Federal agencies' obligated dollars in FY 2017, and DoD has a higher proportion of construction contracts that would likely contain this requirement.

Based on FY 2017 data contained in the Electronic Document Access (EDA) system (the DoD official contract file system), 8,603 DoD contracts contained the relevant FAR clause and a total obligated amount of over $35,000, with a total award magnitude of $12.8 billion (total dollars obligated on the 8,603 contracts). These awards account for 14 percent of the total number of FY 2017 DoD construction contract awards (8,603 ÷ 60,317 (according to data in the Federal Procurement Data System (FPDS))) and 66 percent of the total construction dollars obligated for FY 2017 by DoD ($12.8B÷$19.3B (according to data in FPDS)). These contracts were awarded to 318 unique other than small businesses (1,195 awards), and 1,672 unique small businesses (7,408 awards). However, the impact is even smaller considering that these contractors could be using corporate sureties, individual sureties, or pledging their own assets as acceptable forms of security. DoD, GSA, and NASA interviewed operational contracting officers at the largest procurement offices engaged in construction contracting—the Naval Facilities Engineering Command, and GSA's Public Building Service. Based on their responses, DoD, GSA, and NASA estimate that less than 0.1 percent of contractors, mostly small businesses, are using individual sureties to meet the required bonding under contracts. Accordingly, DoD, GSA, and NASA estimate about 9 (8,603 * 0.1 percent) FY 2017 DoD contract awards accounting for 0.015 percent (9 ÷ 60,317) of the total number of FY 2017 DoD construction contract awards and 0.066 percent ($12.8M ÷ $19.3B) of the total construction dollars obligated for FY17 by DoD, might be associated with individual sureties. Using data in FPDS and applying the same percentages to the 59,351 of FY 2017 other than DoD construction contract awards, and the $12 billion construction dollars obligated for FY17 by other than DoD, DoD, GSA, and NASA find that 9 (59,351 * 0.00015) construction contract awards and $7.9 million construction dollars ($12 B * 0.00066) obligated for FY 2017 by other than DoD might be associated with individual sureties. In summary, DOD, GSA, and NASA found that this proposed rule is likely to impact about 18 contract awards, and $20.7 million obligated dollars.

To the extent that this proposed rule reduces the pool of individual sureties from which a small business contractor or subcontractor may obtain a bond, these entities have the option of seeking bond assistance through the Surety Bond Guarantee (SBG) Program operated by the U.S. Small Business Administration (SBA). Under the SBG Program, SBA guarantees the bid, performance or payment bonds issued by participating surety companies to small business contractors. The SBA guarantee covers a certain percentage of any loss that the surety may incur on the bond. The SBG Program is intended to assist small business contractors who are unable to obtain a bond on reasonable terms and conditions without the SBA guarantee. The SBA's guarantee, therefore, encourages the surety company to issue a bond that it would not otherwise provide for a small business. SBA may guarantee bonds for contracts that do not exceed $6.5 million, and up to $10 million if a Federal contracting officer certifies that such a guarantee is necessary (see 13 CFR part 115). Public input is being sought to help evaluate whether the reduction in business opportunities for providers of individual sureties is likely to be offset by an increase in opportunities for providers of corporate sureties.

In addition, there are aspects of the rule that could reduce burden. For example, the new requirements will create greater certainty of payment for subcontractors, who are a key intended benefactor of the law and proposed rule. While DoD, GSA, and NASA lack data to quantify this benefit, this certainty should eliminate due diligence steps that Federal subcontractors have ostensibly been forced to take to ensure they will indeed be protected by a surety bond in the event of a prime contractor's default. As described in one law review article, this due diligence includes verifying with the designated financial institution that it is holding cash or cash equivalents in an escrow account in the name of the contracting agency for use in meeting the surety's promises. See Edward G. Gallagher & Mark H. McCallum, The Importance of Surety Bond Verification, 39 Public Contract Law Journal 269 at 283 (Winter 2010).

It is also anticipated that the Federal Government may experience reduced burden under the new rule. Contracting officers will no longer have to research individual sureties and make case-by-case determinations of whether securities pledged by individual sureties are suitable and can instead refocus their attention on higher value acquisition planning and management activities that take better advantage of their training as acquisition specialists.

Rates of default on individual and corporate sureties are currently unknown, but all other aspects of a construction contractor being equal, it is assumed that corporate sureties provide greater cost avoidance in the case of default by prime contractors to both subcontractors and the Government. These costs could include financial losses on Federal projects, loss of experienced subcontractors and workers when they are not paid, delays in a project's completion, litigation costs, and additional expenses related to contract administrative actions to secure resources needed to continue the

construction project and make up for schedule delays. More information is needed to quantify these costs and the potential mitigating impacts of this rule.

DoD, GSA, and NASA welcome public input to help more fully understand the impact of this regulation on affected parties. DoD, GSA, and NASA lack data on individual sureties, but believe based on interviews of contracting officials of major construction operations at the Naval Facilities Engineering Command, and GSA's Public Building Service, DoD, and GSA that individual sureties are used far less frequently than corporate sureties. In addition to input from any subject matter experts, DoD, GSA, and NASA invite input from affected parties, including the following:

1. For subcontractors and suppliers on Federal construction and other projects that require prime contractors to obtain sureties—

a. What positive or negative impacts do you anticipate the new rules will have on your work?

b. To what extent might SBA's SBG Program provide an alternative option to individual sureties?

c. Do you agree that subcontractors may see reduced burden because they will not need to take the same level of precaution to protect against fraud and abuse by individual sureties, when individual sureties are used? If not, why not?

2. For individual sureties—

a. What additional burden may be created for individual sureties who decide to convert their assets into the kind that qualify under the new legislation?

b. What would be the impact, in terms of time, effort, and cost, for individual sureties to convert their assets into the kind that qualify under the new legislation?

3. For prime contractors that currently rely on individual sureties—

a. Do you anticipate greater difficulty obtaining necessary surety bonds? If so, why?

b. Have you experienced challenges with individual sureties? If so, what was the nature of the challenges?

c. Do you expect fees charged by individual sureties to be impacted under the new rule?

d. To what extent might SBA's SBG Program provide an alternative option to individual sureties?

DoD, GSA, and NASA have calculated the cost of regulatory familiarization with the new process, based on FPDS data for FY 2017, estimating that for the first year 5 entities will be subject to the new requirements, 1 hour per entity; and due to turnover and new entrants, 20 percent of that amount in subsequent years. The estimated public cost for familiarization, calculated in 2016 dollars at a 7 percent discount rate in perpetuity is as follows:

Annualized—$40.75
Present Value—$582.08

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action and therefore, this rule was subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is considered an E.O. 13771 regulatory action. Details on the expected impact on the public can be found in Section IV of this preamble.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The rule proposes to amend the Federal Acquisition Regulation (FAR) to change the kinds of assets that individual sureties must pledge as security for their individual surety bonds.

The objective of the FAR rule is to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016 (FY16)(Pub. L. 114–92), which adds 31 U.S.C. 9310, Individual sureties, which limits the security for an individual surety bond to eligible obligations, *i.e.,* cash and/or Government obligations. This section was intended to strengthen coverage for individual sureties, thereby mitigating risk to the Government. The legal basis for this rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

The proposed rule applies to all offerors and contractors who wish to use an individual surety as security for bonds required under a solicitation/contract for supplies or services (including construction). The number of solicitations and contracts requiring the submission of bid guarantees, performance, or payment bonds, correlate roughly to the number of contract awards containing FAR clause 52.228–11, Pledge of Assets. Based on FY 2017 data contained in EDA, 8,603 DoD contract awards, containing FAR clause 52.228–11 with an obligated amount of over $35,000, were made to 1,990 unique vendors; of these 1,672 were small business entities. These contractors could be using corporate sureties under 28.202, individual sureties under 28.203, or pledging the contractor's own assets under 28.204; this FAR case only covers individual sureties under 28.203. Therefore, based on contracting officers' experience in the field DoD, GSA, and NASA estimate that less than 0.1 percent of contractors are using individual sureties to meet the required bonding under contracts.

The proposed rule does not include additional reporting or record keeping requirements. Although the proposed rule creates a new provision to distinguish instructions to offerors from instructions to a contractor by relocating the ''offeror'' language from the existing FAR clause at 52.228–11, Pledge of Assets, the net effect of projected reporting and recordkeeping is unchanged. The use of Standard Form 28, Affidavit of Individual Surety, an existing reporting requirement under 52.228–11, is covered under the Office of Management and Budget (OMB) Control No. 9000–0001. The SF 28 is revised as a result of this rule. However, this will have a negligible impact on offerors, contractors, and respondents.

The effect on small business is that individual sureties will no longer be able to pledge real property, corporate stocks, corporate bonds, or irrevocable letters of credit. DoD, GSA, and NASA anticipate that some individual sureties may not want to transform their assets into the kind that qualify under the new legislation, and so there will be fewer individual sureties available to meet the needs of small business offerors/contractors. This may mean that some small businesses that have been using individual sureties will have their costs change, as they go to a different individual surety, or to a corporate surety.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no available alternatives to the proposed rule to accomplish the desired objective of the statute. DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities because this only applies to (1) offerors and contractors who are using an individual surety as security for bonds required under a solicitation/contract for supplies or services (including construction), and (2) individual sureties, a small number of whom may not want to transform their assets into the kind that qualify under the new legislation.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other

interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–003) in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply; however, the proposed changes to the FAR do not impose additional information collection requirements. This rule proposes to modify the Standard Form (SF) 28, which is used by all executive agencies to obtain information from individuals wishing to serve as sureties to Government bonds. However, the modification merely updates the language in the form to be consistent with the changes to the FAR text; it will have no impact on offerors or contractors. The modification of the SF 28 does not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0001, Standard Form 28, Affidavit of Individual Surety.

List of Subjects in 48 CFR Parts 19, 28, 32, 52, and 53

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 19, 28, 32, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 19, 28, 32, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 19—SMALL BUSINESS PROGRAMS

19.602–1 [Amended]

■ 2. Amend section 19.602–1 by removing from paragraph (a) ''and 28.203(c))'' and adding ''and 28.203–1(e))'' in its place.

PART 28—BONDS AND INSURANCE

28.102–2 [Amended]

■ 3. Amend section 28.102–2 by removing from paragraph (e) ''of 28.203–5(c)'' and adding ''of 28.203–3(c)'' in its place.

■ 4. Amend section 28.106–1 by removing paragraph (o); redesignating paragraph (p) as paragraph (o); and revising the new redesignated paragraph (o) to read as follows.

28.106–1 Bonds and bond related forms.

* * * * *

(o) OF 91, Release of Personal Property from Escrow (see 28.203–3).

■ 5. Amend section 28.202 by—

■ a. Revising paragraph (a)(1);

■ b. Revising the first sentence of paragraph (a)(2);

■ c. Removing from paragraph (a)(3) ''Department of the Treasury regulations'' and adding ''Department of the Treasury (Treasury) regulations'' in its place;

■ d. Removing from paragraph (a)(4) ''Standard Form 273'', ''Standard Form 274'' and ''Standard Form 275'' and adding ''Standard Form (SF) 273'', ''SF 274'', and ''SF 275'' in their places, respectively

■ e. Revising the first sentence of paragraph (c); and

■ f. Revising paragraph (d) to read as follows:

28.202 Acceptability of corporate sureties.

(a)(1) Corporate sureties offered for bonds furnished with contracts performed in the United States or its outlying areas must appear on the list contained in the Department of the Treasury's Listing of Approved Sureties (Treasury Department Circular 570), ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.''

(2) The penal amount of the bond should not exceed the surety's underwriting limit stated in the Treasury Department Circular 570.

* * *

* * * * *

(c) Treasury issues supplements to Treasury Department Circular 570, notifying all Federal agencies of new approved corporate surety companies and the termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. * * *

(d) Treasury Department Circular 570 may be obtained from the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Branch, 3201 Pennsy Drive, Building E, Landover, MD 20785. Or via the internet at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

■ 6. Revise the section 28.203 to read as follows:

28.203 Individual sureties.

28.203–1 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds.

Assets pledged by an individual surety shall meet the eligibility requirements of Treasury's Bureau of the Fiscal Service. Per 31 U.S.C. 9310, individual sureties must pledge eligible obligations, which Treasury refers to as acceptable collateral or eligible collateral. A list of acceptable assets, entitled ''Acceptable Collateral for 31 CFR PART 225,'' is available at *https://www.treasurydirect.gov/instit/statreg/collateral/2018Final225ListofAcceptableCollateral.pdf.*

(b)(1) An individual surety shall execute the bond (*e.g.,* bid bond (SF 24), performance bond (SF 25), payment bond (SF 25A)).

(2) The net adjusted value of unencumbered assets is their market value minus the margin. The margin tables are available at *www.treasurydirect.gov.* The net adjusted value of unencumbered assets pledged by the individual surety must equal or exceed the penal amount (*i.e.,* face value) of each bond.

(3) The individual surety shall execute the SF 28, Affidavit of Individual Surety, and provide a security interest. One individual surety is adequate support for a bond, provided the net adjusted value of unencumbered assets pledged by that individual surety equals or exceeds the amount of the bond.

(4) An offeror or contractor may submit up to three individual sureties for each bond, in which case the net adjusted value of the pledged unencumbered assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety is jointly and severally liable to the extent of the penal amount of the bond.

(c) Using the information from the SF 28 submitted by the offeror or contractor, the contracting officer shall notify the Treasury's collateral operations support team by email at *BMT@fiscal.treasury.gov* or by phone at 888–568–7343, of the individual surety, the assets to be pledged, and the amount necessary to cover the individual surety bond, *i.e.,* the required amount to be collateralized. If after 3 business days the contracting officer has not received a response from Treasury, the contracting officer may seek assistance from the Director, Bank Policy and Oversight, at 202–504–3502. Treasury will advise the contracting officer whether the assets are eligible to be pledged, consistent with 28.203–1(a), and of the valuation of the assets offered to be pledged, consistent with the valuation standards in 28.203–1(b)(2). The contracting officer shall determine whether the individual surety bond is acceptable as to the amount necessary to

cover the individual surety bond based on the asset eligibility and valuation assessment from Treasury. The contracting officer shall notify both the offeror or contractor and the individual surety of this determination.

(d) If the contracting officer determines the individual surety is acceptable, the contracting officer shall request the Treasury's collateral operations support team set up the necessary individual surety pledged asset collateral account.

(e) If the contracting officer determines that no individual surety in support of a bid guarantee is acceptable, the offeror utilizing the individual surety shall be rejected as nonresponsible, except as provided in 28.101–4. A finding of nonresponsibility based on unacceptability of an individual surety, need not be referred to the Small Business Administration for a Certificate of Competency. (See 19.602–1(a) and 61 Comp. Gen. 456 (1982).)

(f) If a contractor submits an unacceptable individual surety, or one that Treasury could not assess the asset eligibility and valuation within a reasonable time, then the contracting officer may permit the contractor to substitute an acceptable surety within a reasonable time.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

28.203–2 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request, including a revised SF 28, to the responsible contracting officer. Following the requirements set forth in 28.203–1, the contracting officer may agree to the substitution of assets upon determining, that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations.

28.203–3 Release of security interest.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a)(1) and (2) of this section. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Bonds statute.* See section 1.110 and paragraph (a) of section 28.102–1. The security interest shall be maintained for the later of (i) one year following final payment, (ii) until completion of any warranty period (applicable only to performance bonds), or (iii) pending resolution of all claims filed against the payment bond during the 1 year period following final payment.

(2) *Contracts subject to alternative payment protection.* See paragraph (b)(1) of section 28.102–1. The security interest shall be maintained for the full contract performance period plus one year.

(3) *Other contracts not subject to the Bonds statute.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request by the individual surety, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the subparagraphs (a)(1) through (3) of this section. In making this determination, the contracting officer will give consideration as to whether the unreleased portion of the security is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

28.203–4 Solicitation provision and contract clause.

(a) Insert the provision at 52.228–XX, Individual Surety—Pledge of Assets (Bid Guarantee), in solicitations which require the submission of a bid guarantee.

(b) Insert the clause at 52.228–11, Individual Surety—Pledge of Assets, in solicitations and contracts which require the submission of performance, or payment bonds.

28.203–5 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this section shall be entered as an exclusion in the System for Award Management (see 9.404).

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear in an active exclusion record in the System for Award Management (see 9.404), unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this section will also preclude such party from acting as a contractor in accordance with subpart 9.4.

28.204 [Amended]

7. Amend section 28.404 by removing from paragraph (b) ''lien in 28.203–5(c)'' and adding ''security in 28.203–3(c)'' in its place.

28.204–1 [Amended]

■ 8. Amend section 28.204–1 by removing from the first sentence of the text ''dated July 1, 1978''.

PART 32—CONTRACT FINANCING

32.202–4 [Amended]

■ 9. Amend section 32.202–4 by removing from paragraph (c) ''28.203–2, 28.203–3, and'' and adding ''28.203 and'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add section 52.228–XX to read as follows:

52.228–XX Individual Surety—Pledge of Assets (Bid Guarantee).

As prescribed in 28.203–4(a), insert the following provision:

Individual Surety—Pledge of Assets (Bid Guarantee) (Date)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Offeror shall include with its offer the information required at paragraph (a) of this provision within the time frame specified in the provision at FAR 52.228–1, Bid Guarantee, or as otherwise established by the Contracting Officer.

(c) The Contracting Officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(End of provision)

■ 11. Revise section 52.228–11 and section heading to read as follows:

52.228–11 Individual Surety—Pledges of Assets.

As prescribed in 28.203–4(b), insert the following clause:

Individual Surety—Pledges of Assets (Date)

(a) The Contractor shall obtain from each person acting as an individual surety on a performance bond or a payment bond—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding $150,000 (40 U.S.C. 3131).* Until completion of any warranty period, or for one year following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR 28.102–1(b)(1)).* For the full contract performance period plus one year.

(3) *Other contracts not subject to the requirements of paragraph (b)(1) of this clause.* Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c) A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding $150,000 which require performance and payment bonds (40 U.S.C. 3131).* For one year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR 28.102–1(b)(1)).* For the full contract performance period plus one year.

(3) *Other contracts not subject to the requirements of paragraph (c)(1) of this clause.* For 90 days following final payment.

(d) The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor shall comply with the requirements of paragraph (a) of this clause within the time frame established by the Contracting Officer.

(End of clause)

PART 53—FORMS

53.228 [Amended]

■ 12. Amend section 53.228 by—

■ a. Removing from paragraph (e) ''(Rev. 6/2003)'' and ''28.203(b).)'' and adding ''''(Rev. Date)'' and ''28.203–1(b)(3).)'' in their places, respectively;

■ b. Removing paragraph (o);

■ c. Redesignating paragraph (p) as paragraph (o); and

■ d. Removing from the newly redesignated paragraph (o) ''(See 28.106–1(p) and 28.203–5(a).)'' and adding ''(See 28.106–1(o) and 28.203–3(a).)'' in its place.

53.300 [Amended]

■ 13. Amend section 53.300 by removing from the table 53–1 in paragraph (a) ''OF 90 Release of Lien on Real Property.''

[FR Doc. 2020–02655 Filed 2–11–20; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 85, No. 29

Wednesday, February 12, 2020

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

February 7, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. 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.

Comments regarding these information collections are best assured of having their full effect if received by March 13, 2020. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

National Agricultural Statistics Service (NASS)

Title: Field Crops Objective Yield—Substantive Change.

OMB Control Number: 0535–0088.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .'' The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The current OMB approval for the Objective Yield (OY) Surveys, provides for the collection of data in major producing States for corn, upland cotton, fall potatoes, soybeans, and winter wheat. Major producing States are States that, when combined, produce over 75 percent of the respective commodities. Data from the OY surveys provide yield estimates for these commodities during the growing season and it is based on unbiased input by utilizing plant counts and other measurements during the growing season. Accurate yield estimates are extremely important because they are used in conjunction with price data to estimate production and value which are used in making policy decisions. The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Objective Yield program. The changes will include the following:

- Eliminating Potato Objective Yield
- Removing Louisiana and North Carolina from Cotton Objective Yield
- Eliminating the August survey period for Cotton (except Texas), Corn, and Soybeans
- Reducing sample sizes for all field crops included in this program.

Following the conclusion of each Census of Agriculture, NASS reviews our overall survey and estimation programs to see what changes or adjustments need to be made in order to optimize the funds we are provided. This is done for the purpose of achieving our primary functions of preparing and issuing State and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors. This substantive change resulted in an overall decrease in response burden of approximately 1,113 hours. The target sample size for enumerated questionnaires will be reduced by approximately 2,600.

Need and Use of the Information: Objective Yield estimates for field crops are used by NASS to provide unbiased input by utilizing plant counts and other measurements during the growing season. Accurate yield estimates are extremely important because they are used in conjunction with price data to estimate production and value which are used in making policy decisions.

Description of Respondents: Farms sampled for the County Estimates—Row Crops.

Number of Respondents: 13,250.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 4,343.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–02768 Filed 2–11–20; 8:45 am]

BILLING CODE 3410–20–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 Friday, February 21, 2020, at 2:00 p.m. EST. The purpose of the meeting is to review the recommendations section of their report.

DATES: The meeting will be held on Friday, February 21, 2020, at 2:00 p.m. EST. Public Call Information: Dial: 800–367–2403, Conference ID: 7298603.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, DFO, at *afortes@usccr.gov* or 213–894–3437.

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 Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn St., Suite 2120, Chicago, IL 60604. 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 Regional Programs Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs 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. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Office at the above email or street address.

Agenda

I. Welcome
II. Approval of January 28, 2020 Minutes
III. Review Report Draft
  a. Review Edits from Sharon Dolente and Edie Goldenberg
  b. Recommendations
IV. Public Comment
V. Adjournment

Dated: February 7, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–02831 Filed 2–11–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 200127–0030]

Management and Organizational Practices Survey—Hospitals (MOPS–HP)

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of consideration and request for comments.

SUMMARY: Notice is hereby given that the Bureau of the Census (Census Bureau) is considering a proposal to conduct a Management and Organizational Practices Survey—Hospitals (MOPS–HP) as a joint project with Harvard Business School. Based on information and recommendations received by the Census Bureau, we understand that the data have significant application to the needs of other government agencies and the public. The MOPS–HP will collect data on management practices from Chief Nursing Officers (CNOs) at general, medical, and surgical hospitals to assist in identifying determinants of clinical and financial performance. These data are not publicly available from nongovernment or other governmental sources.

DATES: Written comments on this notice must be submitted on or before March 13, 2020.

ADDRESSES: Please direct all written comments to Edward Watkins, U.S. Census Bureau, Economy-Wide Statistics Division, 8K151, Washington, DC 20233–6600, or at *edward.e.watkins.iii@census.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Edward Watkins at *edward.e.watkins.iii@census.gov* or 301–763–4750.

SUPPLEMENTARY INFORMATION: The Census Bureau is considering a proposal to conduct the MOPS–HP for survey year 2019 as a joint project with Harvard Business School. The MOPS–HP will utilize the Service Annual Survey (SAS) mail-out sample and will collect data on management practices from CNOs at general, medical, and surgical hospitals to assist in identifying determinants of clinical and financial performance.

Currently, no official statistics on management practices in hospitals exist. Past research shows these practices are related to health care providers' clinical and financial outcomes. This suggests that providing measures on management practices may potentially help the United States health care system, which is challenged by rising health care costs, increased demand from an aging society, and quality objectives. These data would permit users, such as Harvard Business School, to examine relationships between management practices and financial outcomes using Census Bureau data (*e.g.,* revenues) and relationships with clinical outcomes using external data sources. Additionally, these data would provide hospital administrators and managers information to evaluate their practices in comparison to other hospitals at an aggregate level.

The MOPS–HP content was proposed by external researchers with past experience in surveying hospitals on management practices. Some questions are adapted from the Management and Organizational Practices Survey (MOPS), conducted in the manufacturing sector, allowing for inter-sectoral comparisons. Content for the MOPS–HP includes performance monitoring, financial and clinical targets, and incentives. The 39 questions are grouped into the following sections: Tenure, Management Practices, Management Training, Management of Team Interactions, Staffing and Allocation of Human Resources, Standardized Clinical Protocols, Documentation of Patients' Medical Records, and Organizational Characteristics.

The MOPS–HP sample will consist of approximately 4,500 hospital locations for enterprises classified under General Medical and Surgical Hospitals (NAICS 6221) and sampled in the SAS. The survey will be mailed separately from

the 2019 SAS and collected electronically through the Census Bureau's Centurion online reporting system. Respondents will be sent an initial letter with instructions detailing how to log into the instrument and report their information. These letters will be addressed to the location's CNO. Before mailing, the Census Bureau will attempt to identify the CNO at each location. In instances where the CNO is not identifiable, the letter will be addressed to the hospital's administrative office with attention to the CNO. Collection is scheduled to begin in September 2020 and end in April 2021.

Paperwork Reduction Act

Notwithstanding, any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. In accordance with the PRA, 44 United States Code, Chapter 45, the Census Bureau will submit a request for approval to the OMB for approval of the MOPS–HP.

Dated: February 5, 2020.

Steven D. Dillingham,

Director, Bureau of the Census.

[FR Doc. 2020–02758 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–07–2020]

Foreign-Trade Zone (FTZ) 52—Hauppauge, New York, Notification of Proposed Production Activity, Regent Tek Industries, Inc. (Road Marking Material), Shirley, New York

Regent Tek Industries, Inc. (Regent Tek), submitted a notification of proposed production activity to the FTZ Board for its facility in Shirley, New York. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 31, 2020.

Regent Tek's facility is located within FTZ 52. The facility is used for the production of thermoplastic road marking material. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Regent Tek from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Regent Tek would be able to choose the duty rates during customs entry procedures that apply to thermoplastic granular road marking material (duty rate 3.2%). Regent Tek would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Titanium dioxide (TiO2); glass beads (M247 Type 1); resins—pentaerythritol ester of rosin and alkyd gum-based resin; and, stearic acid—saturated fatty acid (duty rate ranges from 2.1c/kg + 3.8% to 6%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 23, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: February 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–02788 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–27–2020]

Foreign-Trade Zone 107—Polk County, Iowa; Application for Subzone; Warehouse Specialists, LLC; Council Bluffs, Iowa

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Iowa Foreign Trade Zone Corporation, grantee of FTZ 107, requesting subzone status for the facility of Warehouse Specialists, LLC, located in Council Bluffs, Iowa. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 7, 2020.

The proposed subzone (48.04 acres) is located at 19301 Bunge Avenue (Highway H10), Council Bluffs, Iowa. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 107.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 23, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 7, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–02787 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–815]

Finished Carbon Steel Flanges From Spain: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) finds that sales of finished carbon steel flanges (flanges) from Spain were made at less than normal value during the period of review (POR), February 8, 2017 through May 31, 2018.

DATES: Applicable February 12, 2020.

FOR FURTHER INFORMATION CONTACT: Marc Castillo or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0519 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the initiation of this administrative review on August 10, 2018.[1] These final results cover six companies for which an administrative review was initiated and not rescinded. On August 13, 2019, Commerce published the *Preliminary Results* of this administrative review and invited interested parties to comment on the *Preliminary Results.*[2] On November 26, 2019, Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners) submitted their case brief.[3] On the same day, ULMA submitted its case brief.[4] On December 9, 2019, the petitioners submitted their rebuttal brief.[5] Also on December 9, 2019, ULMA submitted its rebuttal brief.[6] No other party submitted case or rebuttal briefs.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[7] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On November 19, 2019, we extended the deadline for these final results, until February 7, 2020.[8]

Scope of the Order[9]

The scope of the *Order* covers finished carbon steel flanges. Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum,[10] which is incorporated herein by reference. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, follows in the appendix to this notice.

Changes Since the Preliminary Results

Based on our analysis of the comments received, and for the reasons explained in the Issues and Decision Memorandum, Commerce made no changes in methodology to the *Preliminary Results.* However, based on our analysis of the comments received, and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to ULMA's margin calculation.

Final Results of Administrative Review

For these final results, we determine that the following weighted-average dumping margins exist for the period February 8, 2017 through May 31, 2018:

Exporter/manufacturer	Weighted-average dumping margin (percent)
ULMA Forja, S.Coop	4.47
Grupo Cunado	4.47
Tubacero, S.L	4.47
Ateaciones De Metales Sinterizados S.A	4.47
Transglory S.A	4.47
Central Y Almacenes	4.47

Rate for Non-Selected Respondents

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated a margin for ULMA that was not zero, *de minimis,* or based on facts available. Accordingly, we have applied the margin calculated for ULMA to the non-individually examined respondents.

Assessment

Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. Commerce will instruct CBP to apply an *ad valorem* assessment rate of 4.47 percent to all entries of subject merchandise during the POR which were produced and/or exported by ULMA. Commerce will also instruct CBP to apply an *ad valorem* assessment rate of 4.47 percent to all entries of subject merchandise during the POR which were produced and/or exported by Grupo Cunado, Tubacero, S.L., Ateaciones De Metales Sinterizados S.A., Transglory S.A., and Central Y Almacenes. We intend to

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 39688 (August 10, 2018) (*Initiation Notice*).

[2] *See Finished Carbon Steel Flanges from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 40026 (August 13, 2019) (*Preliminary Results*).

[3] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from Spain: Case Brief,'' dated November 26, 2019.

[4] *See* ULMA's Letter, ''ULMA FORJA's Case Brief: Finished Carbon Steel Flanges from Spain POR 1,'' dated November 26, 2019.

[5] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from Spain: Rebuttal Brief,'' dated December 9, 2019.

[6] *See* ULMA's Letter, ''ULMA FORJA's Reply Brief: Finished Carbon Steel Flanges from Spain POR 1,'' dated December 9, 2019.

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

[8] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 2017–2018,'' dated November 18, 2019.

[9] *See Finished Carbon Steel Flanges from Spain: Antidumping Duty Order,* 82 FR 27229 (June 14, 2017) (the *Order*).

[10] *See* Memorandum, ''Issues and Decisions Memorandum for the Final Results of the Antidumping Duty Administrative Review: Finished Carbon Steel Flanges from Spain; 2017–2018,'' dated concurrently with this notice (Issues and Decisions Memorandum).

issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements for estimated antidumping duties will be effective upon publication of the notice of these final results of review for all shipments of flanges from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for ULMA, Grupo Cunado, Tubacero, S.L., Ateaciones De Metales Sinterizados S.A., Transglory S.A., and Central Y Almacenes, will be 4.47 percent; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 18.81 percent,[11] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties Regarding Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing notice of these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: February 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
  Comment 1: Scrap Offset
  Comment 2: Cost Reconciliation Difference
  Comment 3: Reconversion Income
  Comment 4: Programming Adjustments
V. Recommendation

[FR Doc. 2020–02777 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* the *Order,* 82 FR 27229.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

DATES: Applicable February 12, 2020.

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period July 1, 2019 through September 30, 2019. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce's regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on January 16, 2020.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between July 1, 2019 through September 30, 2019.

Scope Rulings Made July 1, 2019 through September 30, 2019:

Mexico

A–201–845 and C–201–846: Sugar From Mexico

Requestor: Batory Foods, Inc., and Rafi Industries, Inc. U.S.-origin ''standard sugar'' with sucrose/polarity content equal to or higher than 99.4, a maximum moisture content of 0.06 percent, and a maximum color of 600; and U.S.-origin ''refined sugar'' with a sucrose/polarity content of at least 99.85, sediment of 3 ppm max, and a moisture content of 0.04 percent max, which are repackaged in Mexico into four ply, fifty-pound-capacity kraft paper bags (41.7145 inches by 30.50 inches) and 2,500-pound-capacity polypropylene 'supersacks' (50 inches in height, with a front panel measuring 37 inches and a side panel measuring 37 inches), imported by Rafi Industries, Inc., are not within the scope of the Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico (A–201–845 and C–201–846) because the repackaging operations in Mexico do not substantially transform the products and, thus, do not alter their country of origin; September 3, 2019.

People's Republic of China (China)

A–570–914 and C–570–915: Light-Walled Rectangular Pipe and Tube From the People's Republic of China

Requestor: Carlson AirFlo Merchandising Systems; certain finished components of refrigerated merchandising and display structures imported from China with part numbers R10447, and 250355 are outside the scope of the antidumping duty orders; September 11, 2019.

A–570–601: Tapered Roller Bearings From the People's Republic of China

Requestor: WorldPac Inc.; Based on our analysis of the scope language of the order, the comments received, and a substantial transformation analysis, we determined that WorldPac's wheel hub assembly, consisting of a Chinese tapered roller bearing (TRB) set, a Polish TRB set, a German wheel hub, and a non-Chinese origin shaft seal with anti-lock brake (ABS) sensors ring, produced

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 85 FR 2712 (Jan. 16, 2020).

in Germany is not covered by the scope of the order; September 11, 2019.

A–570–909: Certain Steel Nails From the People's Republic of China

Requestor: Simpson Strong-Tie Company. Pursuant to the Court of International Trade's remand order, zinc and nylon anchors are not ''nails,'' and, therefore, are not covered by the scope of the antidumping duty order on certain steel nails from China. *See Simpson Strong-Tie Company,* v. *United States,* Court No. 17–00057, Slip Op. 19–93 (CIT 2019); *see also Certain Steel Nails from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision,* 84 FR 49094 (September 18, 2019).

Republic of Korea

A–580–870: Certain Oil Country Tubular Goods From the Republic of Korea

Commerce clarifies [3] that the scope of the *Order* [4] pertains solely to products which are capable of being employed for ''down hole'' use in oil and gas wells; or, in the specific case of green tubes, products which are capable of (and clearly intended for) further processing which will make them capable of being employed for ''down hole'' use in oil and gas wells. Commerce further clarifies that products which are incapable (even when further processed) of being employed for ''down hole'' use in oil and gas wells are not covered by the scope of the Order; July 5, 2019.

Thailand

A–549–502: Circular Welded Carbon Steel Pipes and Tubes From Thailand

Requestor: MB Metals, Inc. Fire protection/sprinkler pipes are covered by the scope of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand, because standard pipes can be designed to carry water/liquid and can be produced to meet various ASTM standards and requirements; July 25, 2019.

Anti-Circumvention Determinations Made July 1, 2019 through September 30, 2019:

People's Republic of China

A–570–900: Diamond Sawblades and Parts Thereof From the People's Republic of China

Requestor: Diamond Sawblades Manufacturers' Coalition; diamond sawblades made with Chinese cores and Chinese segments in Thailand by Diamond Tools Technology (Thailand) Co., Ltd., and exported from Thailand to the United States are within the scope of the antidumping duty order; diamond sawblades made with: (1) Chinese cores and Thai Segments; or (2) Thai cores and Chinese segments, in Thailand by Diamond Tools Technology (Thailand) Co., Ltd., and exported from Thailand to the United States are outside the scope of the antidumping duty order; July 10, 2019.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Aluminum Extrusions Fair Trade Committee. Aluminum Extrusions exported from Vietnam, that are produced from aluminum previously extruded in China, are circumventing the antidumping and countervailing duty orders on aluminum extrusions from China; August 12, 2019.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations made during the period July 1, 2019 through September 30, 2019. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW, APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: February 6, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–02776 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Memorandum, ''Section 129 Proceeding (WTO DS488): Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea—Decision Memorandum for Final Determination,'' dated July 5, 2019.

[4] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (the *Order*); *see also Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders with Respect to Turkey and the Socialist Republic of Vietnam,* 79 FR 59740 (October 3, 2014) (correcting page numbers cited in the *Order*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA035]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

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

DATES: The Pacific Council and its advisory entities will meet March 3–9, 2020. The Pacific Council meeting will begin on Wednesday, March 4, 2020 at 8 a.m. Pacific Standard Time (PST), reconvening at 8 a.m. each day through Monday, March 9, 2020. All meetings are open to the public, except a closed session will be held from 8 a.m. to 9 a.m., Wednesday, March 4 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES:

Meeting address: Meetings of the Pacific Council and its advisory entities will be held at the Doubletree by Hilton Sonoma, One Doubletree Drive, Rohnert Park, CA; telephone: (707) 584–5466.

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

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

SUPPLEMENTARY INFORMATION: The March 3–9, 2020 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PST Wednesday, March 4, 2020 and continue at 8 a.m. daily through Monday, March 9, 2020. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion is listen-only; you will be unable to speak to the Pacific Council via the broadcast.

To access the meeting online, please use the following link: *http://www.gotomeeting.com/online/webinar/join-webinar* and enter the March Webinar ID, 752–427–619, and your email address. You can attend the webinar online using a computer, tablet, or smart phone, using the GoToMeeting application. It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio-only portion of the meeting. The audio portion may be attended using a telephone by dialing the toll number 1–562–247–8422 (not a toll-free number), audio access code 771–083–667, and entering the audio pin shown after joining the webinar.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, advisory entity meeting times, and meeting rooms are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance November 2019 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Monday, February 17, 2020.

A. Call to Order

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

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Administrative Matters

1. Report of the Office of National Marine Sanctuaries
2. Marine Planning Update
3. Approval of Council Meeting Record
4. Membership Appointments and Council Operating Procedures
5. Future Council Meeting Agenda and Workload Planning

D. Habitat

1. Current Habitat Issues

E. Salmon Management

1. National Marine Fisheries Service (NMFS) Report
2. Willapa Bay Coho Forecast Methodology Review—Final Action
3. Southern Resident Killer Whale Endangered Species Act Consultation
4. Review of 2019 Fisheries and Summary of 2020 Stock Forecasts
5. Identify Management Objectives and Preliminary Definition of 2020 Management Activities
6. Recommendations for 2020 Management Alternative Analysis
7. Further Direction for 2020 Management Alternatives
8. Further Direction of 2020 Management Alternatives
9. Adopt 2020 Management Alternatives for Public Review
10. Appoint Salmon Hearing Officers

F. Pacific Halibut Management

1. Annual International Pacific Halibut Commission Meeting Report
2. Incidental Catch Recommendations: Options for Salmon Troll and Final Recommendations for Fixed Gear Sablefish Fisheries
3. Transition of Area 2A Fishery Management

G. Ecosystem Management

1. California Current Ecosystem and Integrated Ecosystem Assessment (IEA) Report and Science Review Topics
2. Fishery Ecosystem Plan (FEP) Five-Year Review—Final Action
3. Climate and Communities Initiative Workshop Report

H. Groundfish Management

1. NMFS Report
2 Initial Stock Assessment Plan and Terms of Reference
3. Update on Exempted Fishing Permits (EFPs) for 2021–22
4. Update on 2021–22 Harvest Specifications and Management Measures
5. Inseason Adjustments Including Shorebased Carryover—Final Action

I. Highly Migratory Species Management

1. NMFS Report
2. Review of Essential Fish Habitat—Scoping
3. International Management Activities
4. Drift Gillnet Fishery Hard Caps Update

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Monday, February 17, 2020.

Schedule of Ancillary Meetings

Day 1—Tuesday, March 3, 2020

Habitat Committee 8 a.m.
Scientific and Statistical Committee 8 a.m.
Salmon Advisory Subpanel 1 p.m.

Day 2—Wednesday, March 4, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Enforcement Consultants 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Tribal Policy Group As Necessary
Tribal and Washington Technical Group As Necessary

Day 3—Thursday, March 5, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary
Tribal Policy Group As Necessary
Tribal and Washington Technical Group As Necessary

Day 4—Friday, March 6, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary
Tribal Policy Group As Necessary
Tribal and Washington Technical Group As Necessary

Day 5—Saturday, March 7, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary
Tribal Policy Group As Necessary
Tribal and Washington Technical Group As Necessary

Day 6—Sunday, March 8, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary
Tribal Policy Group As Necessary
Tribal and Washington Technical Group As Necessary

Day 7—Monday, March 9, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Salmon Technical Team 8 a.m.

Although non-emergency issues not contained in this agenda may come before the Pacific Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Pacific Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2412 at least 10 business days prior to the meeting date.

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

Dated: February 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02770 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA037

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, February 27, 2020 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; telephone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will receive an update on Framework Adjustment 32 submission and 2020 scallop work priorities. The committee plans to discuss 2019 fishery performance and outlook for 2020. They will also talk about Amendment 21: Reviewing progress in 2019 and discuss outlook for 2020. They also plan to review Plan Development Team progress on Committee tasking and develop input on range of alternatives. The focus on this discussion will primarily be about Northern Gulf of Maine measures. The Advisory Panel and Committee will have additional discussion on Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) trip limits and the one-way transfer of IFQ from Limited Access (LA) to LAGC at the March 26 and 27, 2020 meetings. They plan to discuss modifications to scallop dredge exemption areas, status of type-approved vessel monitoring system units, and implications of larger crew limits on trips to the Nantucket Lightship South Deep (NLS-S-deep) area on ability of vessels to carry observers (lift raft capacity). Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: February 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02771 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA034]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Habitat Protection and Ecosystem-Based Management Committee; Mackerel Cobia Committee; Shrimp Committee; Dolphin Wahoo Committee; Statement of Organization Practices and Procedures (SOPPs) Committee (Closed Session); Executive Finance Committee; and Snapper Grouper Committee. The meeting week will also include a meeting of the Committee of the Whole, a formal public comment session, and a meeting of the Full Council.

DATES: The meetings will be held from 1:30 p.m. on Monday, March 2, 2020 until 11:30 a.m. on Friday, March 6, 2020.

ADDRESSES:

Meeting address: The meeting will be held at the Westin Jekyll Island, 110 Ocean Way, Jekyll Island, GA 31527; phone: (912) 635–4545.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.* Meeting information is available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.*

SUPPLEMENTARY INFORMATION:

Public comment: Written comments may be directed to John Carmichael, Executive Director, South Atlantic Fishery Management Council (see *Council address*) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/.* Comments received by close of business the Monday before the meeting (2/24/20) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. For written comments received after the Monday before the meeting (after 2/24/20), individuals submitting a comment must use the Council's online form available from the website. Comments will automatically be posted to the website and available for Council consideration. Comments received prior to noon on Thursday, March 5, 2020 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Committee of the Whole—Monday, March 2, 2020, 1:30 p.m. until 5:30 p.m. and Tuesday, March 3, 2020, 8:30 a.m. until 5 p.m.

1. The Committee will receive an overview of proposed management changes in the Florida Keys National Marine Sanctuary (FKNMS) Restoration Blueprint, a presentation from the Florida Fish and Wildlife Commission (FWC) regarding the proposed measures, an update from FKNMS staff, and an overview of the Council's role regarding the measures in the Restoration Blueprint from NOAA General Counsel. The Committee will discuss and take action as appropriate.

2. The Committee will also receive a staff presentation on analysis of the need for conservation and management of selected species, discuss and provide recommendations as needed.

3. The Committee will receive a presentation from staff providing background information on allocations, consider allocation approaches and annual catch limits (ACLs), and provide guidance to staff as appropriate.

Habitat Protection and Ecosystem-Based Management Committee—Wednesday, March 4, 2020, 8:30 a.m. until 9:30 a.m.

1. The Committee will receive an update on Council actions relative to habitat and ecosystems, receive a report from the November 2019 meeting of the Habitat Advisory Panel, and provide guidance to staff.

Mackerel Cobia Committee, Wednesday, March 4, 2020, 9:30 a.m. until 12 p.m.

1. The Committee will receive an update on the status of commercial landings and amendments currently under formal Secretarial review.

2. The Committee will receive an overview of Framework Amendment 9 to the Coastal Migratory Pelagic Resources Fishery Management Plan addressing Spanish mackerel commercial trip limits in the Northern Zone, review public hearing comments, and consider approving the amendment for Secretarial review.

Shrimp Committee, Wednesday, March 4, 2020, 1:30 p.m. until 2:30 p.m.

1. The Committee will receive an overview of Amendment 11 to the Shrimp Fishery Management Plan (FMP) addressing transit provisions for penaeid shrimp vessels, recommendations from the Council's Shrimp Advisory Panel and Law Enforcement Advisory Panel, review public hearing comments, and discuss and consider approving the amendment for final Secretarial review.

Dolphin Wahoo Committee, Tuesday, March 3, 2020, 2:30 p.m. until 3:45 p.m.

1. The Committee will receive updates from NOAA Fisheries on the status of commercial landings.

2. The Committee will receive an overview of draft Amendment 12 to the Dolphin Wahoo FMP with measures to add bullet mackerel and frigate mackerel as Ecosystem Component species to the Dolphin Wahoo FMP and provide guidance to staff.

3. The Committee will receive an update from staff on the Dolphin Wahoo Participatory Workshops.

Formal Public Comment, Wednesday, March 4, 2020, 4 p.m.—Public comment will be accepted on items on the Council meeting agenda scheduled to be approved for Secretarial Review: Amendment 11 to the Shrimp FMP (penaeid shrimp transit provisions); and Coastal Migratory Pelagic Resources Framework Amendment 9 (Spanish mackerel Northern Zone trip limits). Public comment will also be accepted on all other agenda items. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

SOPPs Committee, Thursday, March 5, 2020, 8:30 a.m. until 9:30 a.m. (Closed Session)

1. The Committee will discuss revisions to the Council's travel policy and Handbook and provide recommendations for Council consideration.

Executive Finance Committee, Thursday, March 5, 2020, 9:30 a.m. until 10:30 a.m.

1. The Committee will address the Council follow-up and priorities listing, receive an update from staff on the Gulf-South Atlantic Recreational Flexibility Workgroup, and an update on Council Policies and Practices. The Committee will discuss and take action as appropriate.

Snapper Grouper Committee, Thursday, March 5, 2020, 10:30 a.m. until 12 p.m.

1. The Committee will receive updates from NOAA Fisheries on commercial landings and the status of amendments under formal Secretarial review.

2. The Committee will receive an update from NOAA Fisheries on modifications to the red snapper seasons as addressed in Snapper Grouper Regulatory Amendment 33 (removing the minimum number of days requirement for opening the season) and the 2020 red snapper season.

3. The Committee will receive an overview of Snapper Grouper Regulatory Amendment 34 addressing proposed Special Management Zones in North Carolina and South Carolina and consider approving the amendment for public hearings.

4. The Committee will provide topics to be addressed on the agenda for the next meeting of the Snapper Grouper Advisory Panel.

Council Session: Thursday, March 5, 2020, 1:30 p.m. until 5 p.m. and Friday, March 6, 2020, 8:30 a.m. until 11:30 a.m.

The Full Council will begin with the Call to Order, adoption of the agenda, and approval of minutes. The Council will receive a legal briefing during Closed Session if needed.

The Council will receive a presentation on Shark Depredation from NOAA Fisheries Highly Migratory Species Division staff.

The Council will receive staff reports including the Executive Director's Report, updates on the MyFishCount recreational reporting pilot program, a report on the Council's System Management Plan (SMP), and an update on the Citizen Science Program.

Presentations will be provided by NOAA Fisheries Southeast Regional

Office staff including a report on the status of commercial landings for species not covered during an earlier committee meeting, bycatch reporting, protected resources, and a presentation on the status of the of the For-Hire Electronic Reporting Amendment. NOAA Fisheries Southeast Fisheries Science Center staff will provide a presentation on the status of the Commercial Electronic Logbook Program and updates on the Atlantic Science Coordination Workshop, the Fishery Independent Surveys Workshop, and changes to the Marine Recreational Information Program (MRIP) weight estimates.

The Council will discuss and take action as necessary.

The Council will review any Exempted Fishing Permits received as necessary.

The Council will receive an update on the Kitty Hawk Wind Project.

The Council will receive reports from the following committees: Committee of the Whole; Shrimp; Habitat; Mackerel Cobia; Snapper Grouper; Dolphin Wahoo; SOPPs, and Executive Finance. The Council will take action as appropriate.

The Council will receive agency and liaison reports; and discuss other business and upcoming meetings and take action as necessary.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meeting.

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

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

Dated: February 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02772 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR010]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of New Jersey and New York

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Atlantic Shores Offshore Wind, LLC (Atlantic Shores) for authorization to take marine mammals incidental to marine site characterization surveys off the coasts of New York and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0499) and along potential submarine cable routes to a landfall location in New York or New Jersey. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 13, 2020.

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.carduner@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.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* 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: Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and

other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 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 proposed action qualifies to be categorically excluded from further NEPA review.

Information in Atlantic Shores' application and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On November 5, 2019, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to marine site characterization surveys off the coast of New York and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0499) and along potential submarine cable routes to a landfall location in either New York or New Jersey. A revised application was received on December 30, 2019. NMFS deemed that request to be adequate and complete. Atlantic Shores' request is for the take of 12 marine mammal species by Level B harassment. Neither Atlantic Shores nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of the Proposed Activity

Overview

Atlantic Shores proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) and geotechnical surveys, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf #OCS–A 0499 (Lease Area) and along potential submarine cable routes to landfall locations in either New York or New Jersey.

The purpose of the proposed surveys are to support the preliminary site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area and along export cable routes (ECRs). As many as three survey vessels may be operate concurrently as part of the proposed surveys. Underwater sound resulting from Atlantic Shores' proposed site characterization surveys has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The estimated duration of the surveys is expected to be up to 350 total days between April 2020 and April 2021. This schedule is based on 24-hour operations and includes potential down time due to inclement weather.

Specific Geographic Region

Atlantic Shores' survey activities would occur in the Northwest Atlantic Ocean within Federal waters. Surveys would occur in the Lease Area and along potential submarine cable routes to landfall locations in either New York or New Jersey (see Figure 1–1 in the IHA application).

Detailed Description of the Specified Activities

Atlantic Shores' proposed marine site characterization surveys include high-resolution geophysical (HRG) and geotechnical survey activities. These survey activities would occur within the both the Lease Area and within ECRs between the Lease Area and the coasts of New York and New Jersey. The Lease Area is approximately 742 square kilometers (km) (183,353 acres) and is located approximately 18 nautical miles (nm; 34 km) southeast of Atlantic City, New Jersey (see Figure 1–1 in the IHA application). For the purpose of this IHA the Lease Area and ECRs are collectively referred to as the Project Area.

Geophysical and shallow geotechnical survey activities are anticipated to be supported by vessels which will maintain a speed of approximately to 3.5 knots (kn) while transiting survey lines. The proposed HRG and geotechnical survey activities are described below.

Geotechnical Survey Activities

Atlantic Shores' proposed geotechnical survey activities would include the following:

- Sample boreholes to determine geological and geotechnical characteristics of sediments;
- Deep cone penetration tests (CPTs) to determine stratigraphy and in situ conditions of the deep surface sediments; and
- Shallow CPTs to determine stratigraphy and in situ conditions of the near surface sediments.

Geotechnical investigation activities are anticipated to be conducted from a drill ship equipped with dynamic positioning (DP) thrusters. Impact to the seafloor from this equipment will be limited to the minimal contact of the sampling equipment, and inserted boring and probes.

In considering whether marine mammal harassment is an expected outcome of exposure to a particular activity or sound source, NMFS considers the nature of the exposure itself (*e.g.,* the magnitude, frequency, or duration of exposure), characteristics of the marine mammals potentially exposed, and the conditions specific to the geographic area where the activity is expected to occur (*e.g.,* whether the activity is planned in a foraging area, breeding area, nursery or pupping area, or other biologically important area for the species). We then consider the expected response of the exposed animal and whether the nature and duration or intensity of that response is expected to cause disruption of behavioral patterns (*e.g.,* migration, breathing, nursing, breeding, feeding, or sheltering) or injury.

Geotechnical survey activities would be conducted from a drill ship equipped with DP thrusters. DP thrusters would be used to position the sampling vessel on station and maintain position at each sampling location during the sampling

activity. Sound produced through use of DP thrusters is similar to that produced by transiting vessels and DP thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. NMFS does not believe acoustic impacts from DP thrusters are likely to result in take of marine mammals in the absence of activity- or location-specific circumstances that may otherwise represent specific concerns for marine mammals (*i.e.,* activities proposed in area known to be of particular importance for a particular species), or associated activities that may increase the potential to result in take when in concert with DP thrusters. In this case, we are not aware of any such circumstances. Therefore, NMFS believes the likelihood of DP thrusters used during the proposed geotechnical surveys resulting in harassment of marine mammals to be so low as to be discountable. As DP thrusters are not expected to result in take of marine mammals, these activities are not analyzed further in this document.

Field studies conducted off the coast of Virginia to determine the underwater noise produced by CPTs and borehole drilling found that these activities did not result in underwater noise levels that exceeded current thresholds for Level B harassment of marine mammals (Kalapinski, 2015). Given the small size and energy footprint of CPTs and boring cores, NMFS believes the likelihood that noise from these activities would exceed the Level B harassment threshold at any appreciable distance is so low as to be discountable. Therefore, geotechnical survey activities, including CPTs and borehole drilling, are not expected to result in harassment of marine mammals and are not analyzed further in this document.

Geophysical Survey Activities

Atlantic Shores has proposed that HRG survey operations would be conducted continuously 24 hours per day. Based on 24-hour operations, the estimated total duration of the proposed activities would be approximately 350 survey days (including 210 survey days within the Lease Area and 140 survey days within the ECR areas; see Table 1). These estimated durations include estimated weather down time.

TABLE 1—SUMMARY OF PROPOSED HRG SURVEY SEGMENTS

Survey segment	Duration (survey days)
Lease Area	210
Northern ECR	80
Southern ECR	60
All areas combined	350

The HRG survey activities will be supported by vessels of sufficient size to accomplish the survey goals in each of the specified survey areas. It is assumed surveys in each of the identified survey areas will be executed by a single vessel during any given campaign (*i.e.,* no more than one survey vessel would operate in the Lease Area at any given time, but there may be one survey vessel operating in the Lease Area and one vessel operating each of the ECR areas concurrently, *i.e.,* three vessels). HRG equipment will either be mounted to or towed behind the survey vessel at a typical survey speed of approximately 3.5 kn (6.5 km) per hour. The geophysical survey activities proposed by Atlantic Shores would include the following:

- Depth sounding (multibeam depth sounder) to determine water depths and general bottom topography (currently estimated to range from approximately 5 meters (m) to 40 m in depth;
- Magnetic intensity measurements (gradiometer) for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;
- Seafloor imaging (side scan sonar) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features;
- Shallow penetration sub-bottom profiler (pinger/chirp) to map the near surface stratigraphy (top zero to five m soils below seabed); and
- Medium penetration sub-bottom profiler (chirps/parametric profilers/sparkers) to map deeper subsurface stratigraphy as needed (soils down to 75 m to 100 m below seabed).

Table 2 identifies the representative survey equipment that may be used in support of planned geophysical survey activities. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 2—SUMMARY OF HRG SURVEY EQUIPMENT PROPOSED FOR USE BY ATLANTIC SHORES

HRG equipment category	Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate
Single Beam Echosounders	Kongsberg EA 400	38 to 200	222.8	31	0.3	10
	Teledyne ODOM Echotrac CVM.	24	224.6	20	0.3	10
Sparker	Applied Acoustics Dura-Spark 240.	0.25 to 5	211.4	180	2.5	1.6
Sub-Bottom Profiler	Edgetech 2000–DSS	2 to 16	178	24	6.3	10
	Edgetech 216	2 to 16	179	17, 20, or 24	10	10
	Edgetech 424	4 to 24	180	71	4	2
	Edgetech 512i	0.5 to 12	180	80	10	10
	Teledyne Benthos Chirp III	2 to 7	197	100	15	10
		10 to 20	205	30	15	10
	Kongsberg GeoPulse	2 to 12	214	30, 40, or 55	16	10
	Innomar SES–2000 Medium–100 Parametric.	85 to 115	241	2	2	40
Boomer	Applied Acoustics S-Boom Triple Plate.	0.01 to 20	203	80	0.8	3
	Applied Acoustics S-Boom	0.01 to 20	195	98	0.8	3

The deployment of HRG survey equipment, including the equipment planned for use during Atlantic Shores' proposed activity, produces sound in the marine environment that has the potential to result in harassment of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activity

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*). All species that could potentially occur in the proposed survey areas are included in Table 4–1 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 7–2 of the IHA application is such that take of these species is not expected to occur either because they have very low densities in the project area or are known to occur further offshore than the project area. These are: The blue whale (*Balaenoptera musculus*), Bryde's whale (*Balaenoptera edeni*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon* spp.), dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), hooded seal (*Cystophora cristata*), and harp seal (*Pagophilus groenlandicus*). As take of these species is not anticipated as a result of the proposed activities, these species are not analyzed further.

Table 3 summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the 2019 draft Atlantic SARs (Hayes *et al.,* 2019), available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY ATLANTIC SHORES' PROPOSED ACTIVITY

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
Toothed whales (Odontoceti)							
Sperm whale (*Physeter macrocephalus*).	North Atlantic	E; Y	4,349 (0.28; 3,451; n/a)	5,353 (0.12)	6.9	0.0	Rare.
Long-finned pilot whale (*Globicephala melas*).	W. North Atlantic	--; N	39,215 (0.3; 30,627; n/a)	18,977 (0.11) [5]	306	21	Rare.
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W. North Atlantic	--; N	93,233 (0.71; 54,443; n/a)	37,180 (0.07)	544	26	Common.
Bottlenose dolphin (*Tursiops truncatus*).	W. North Atlantic, Offshore	--; N	62,851 (0.23; 51,914; 2011).	97,476 (0.06) [5]	519	28	Common offshore.
	W. North Atlantic, Coastal Migratory.	--; N	6,639 (0.41; 4,759; 2015)		48	6.1–13.2	Common nearshore.
Common dolphin [6] (*Delphinus delphis*).	W. North Atlantic	--; N	172,825 (0.21; 145,216; 2011).	86,098 (0.12)	1,452	419	Common.
Atlantic spotted dolphin (*Stenella frontalis*).	W. North Atlantic	--; N	39,921 (0.27; 32,032; 2012).	55,436 (0.32)	320	0	Common.
Risso's dolphin (*Grampus griseus*).	W. North Atlantic	--; N	35,493 (0.19; 30,289; 2011).	7,732 (0.09)	303	54.3	Rare.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy.	--; N	95,543 (0.31; 74,034; 2011).	*45,089 (0.12)	851	217	Common.
Baleen whales (Mysticeti)							
North Atlantic right whale (*Eubalaena glacialis*).	W. North Atlantic	E; Y	428 (0; 418; n/a)	*535 (0.45)	0.8	6.85	Occur seasonally.
Humpback whale [7] (*Megaptera novaeangliae*).	Gulf of Maine	--; N	1,396 (0; 1,380; n/a)	*1,637 (0.07)	22	12.15	Common year round.

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY ATLANTIC SHORES' PROPOSED ACTIVITY—Continued

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
Fin whale [6] (*Balaenoptera physalus*).	W. North Atlantic	E; Y	7,418 (0.25; 6,025; n/a)	4,633 (0.08)	12	2.35	Year round in continental shelf and slope waters.
Sei whale (*Balaenoptera borealis*).	Nova Scotia	E; Y	6,292 (1.015; 3,098; n/a)	*717 (0.30)	6.2	1.0	Year round in continental shelf and slope waters.
Minke whale [6] (*Balaenoptera acutorostrata*).	Canadian East Coast	--; N	24,202 (0.3; 18,902; n/a)	*2,112 (0.05)	8.0	7.0	Year round in continental shelf and slope waters.
Earless seals (Phocidae)							
Gray seal [8] (*Halichoerus grypus*).	W. North Atlantic	--; N	27,131 (0.19; 23,158; n/a)		1,389	5,410	Common.
Harbor seal (*Phoca vitulina*)	W. North Atlantic	--; N	75,834 (0.15; 66,884; 2012).		2,006	350	Common.

[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 (see footnote 3) 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] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2019 draft Atlantic SARs (Hayes *et al.,* 2019).

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, 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 size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs (Hayes *et al.,* 2019).

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] Abundance as reported in the 2007 Canadian Trans-North Atlantic Sighting Survey (TNASS), which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009). Abundance estimates from TNASS were corrected for perception and availability bias, when possible. In general, where the TNASS survey effort provided superior coverage of a stock's range (as compared with NOAA shipboard survey effort), the resulting abundance estimate is considered more accurate than the current NMFS abundance estimate (derived from survey effort with inferior coverage of the stock range). NMFS stock abundance estimate for the common dolphin is 70,184. NMFS stock abundance estimate for the fin whale is 1,618. NMFS stock abundance estimate for the minke whale is 2,591.

[7] 2018 U.S. Atlantic draft SAR for the Gulf of Maine feeding population lists a current abundance estimate of 896 individuals. However, we note that the estimate is defined on the basis of feeding location alone (*i.e.,* Gulf of Maine) and is therefore likely an underestimate.

[8] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

Four marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the survey area and are included in the take request: The North Atlantic right, fin, sei, and sperm whale.

Below is a description of the species that have the highest likelihood of occurring in the project area and are thus expected to potentially be taken by the proposed activities. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters is also a generic stock for management purposes. For humpback whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine. However, references to humpback whales in this document refer to any individuals of the species that are found in the specific geographic region.

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). Surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including north and east of the proposed project area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.* 2017).

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.*

2017), which are increasing in abundance (NMFS 2015). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Seven right whale calves were documented in 2019. The current best estimate of population abundance for the species is 409 individuals, based on data as of September 4, 2019 (Pettis *et al.,* 2019).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the U.S. and Canadian coast. As of February, 2020, a total of 30 confirmed dead stranded whales (21 in Canada; 9 in the United States) have been documented. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities thus far. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event.*

Any right whales in the vicinity of the survey areas are expected to be transient, most likely migrating through the area. The proposed survey areas are part of a biologically important migratory area for North Atlantic right whales; this important migratory area is comprised of the waters of the continental shelf offshore the East Coast of the United States and extends from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn) for all vessels greater than 65 ft. A portion of one SMA overlaps spatially with the northern section of the proposed survey area. This SMA, which is associated with port of New York/New Jersey, is active from November 1 through April 30 of each year. All Atlantic Shores survey vessels, regardless of length, would be required to adhere to a 10 kn vessel speed restriction when operating within this SMA (when the SMA is active from November 1 through April 30). In addition, all Atlantic Shores survey vessels, regardless of length, would be required to adhere to a 10-kn vessel speed restriction when operating in any Dynamic Management Area (DMA) declared by NMFS.

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the project area.

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.* 2007). A key question with regard to humpback whales off the mid-Atlantic states is their stock identity. Using fluke photographs of living and dead whales observed in the region, Barco *et al.* (2002) reported that 43 percent of 21 live whales matched to the Gulf of Maine, 19 percent to Newfoundland, and 4.8 percent to the Gulf of St Lawrence, while 31.6 percent of 19 dead humpbacks were known Gulf of Maine whales. Although the population composition of the mid-Atlantic is apparently dominated by Gulf of Maine whales, lack of photographic effort in Newfoundland makes it likely that the observed match rates under-represent the true presence of Canadian whales in the region (Waring *et al.,* 2016). Barco *et al.* (2002) suggested that the mid-Atlantic region primarily represents a supplemental winter feeding ground used by humpbacks.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. As of February, 2020, partial or full necropsy examinations have been conducted on approximately half of the 111 known cases. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are common in waters of the U. S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Sei whales occur in shallower waters to feed. Sei whales are listed as engendered under the ESA, and the Nova Scotia stock is considered strategic and depleted under the MMPA. The main threats to this stock are interactions with fisheries and vessel collisions.

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45°W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the

species appears to be largely absent (Waring *et al.,* 2016).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina. This event has been declared a UME. As of February, 2020 partial or full necropsy examinations have been conducted on approximately 60 percent of the 79 known cases. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras.

Long-finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Long-finned pilot whales are not listed under the ESA. The Western North Atlantic stock is considered strategic under the MMPA.

Atlantic White-sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities.

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200 m isobaths (Waring *et al.,* 2014).

Common Dolphin

The short-beaked common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, short-beaked common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore forms (Waring *et al.,* 2016). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype that occupies habitats further offshore. Spatial distribution data, tag-telemetry studies, photo-ID studies and genetic studies demonstrate the existence of a distinct Northern Migratory stock of coastal bottlenose dolphins (Waring *et al.,* 2014). During summer months (July-August), this stock occupies coastal waters from the shoreline to approximately the 25 m isobath between the Chesapeake Bay mouth and Long Island, New York; during winter months (January-March), the stock occupies coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia border (Waring *et al.,* 2014). The Western North Atlantic northern migratory coastal stock and the Western North Atlantic offshore stock may be encountered by the proposed survey.

Harbor Porpoise

In the Lease Area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (≤1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30°N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated

numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Lastly, ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. As of February, 2020 a total of 3,050 reported strandings (of all species) had occurred, including 94 strandings reported in New Jersey. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Gray Seal

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the survey area belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016).

As described above, elevated seal mortalities, including gray seals, have occurred from Maine to Virginia since July 2018. This event has been declared a UME, with phocine distemper virus identified as the main pathogen found in the seals. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

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 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hertz (Hz) and 35 kilohertz (kHz);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz; and
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kH.

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. Fourteen marine mammal species (twelve cetacean and two pinniped (both phocid species) have the reasonable potential to co-occur with the proposed survey activities (see Table 3). Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), six are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take 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 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.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in Hz or kHz, while sound level describes the sound's intensity and is measured in dB. Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 micro Pascals (μPa)'' and ''re: 1 μPa,'' respectively. 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 1975). 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. 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 rather than by peak pressures.

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound one km away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (*i.e.,* typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (*e.g.,* spherical spreading (6 dB reduction with doubling of distance) was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Acoustic Impacts

Geophysical surveys may temporarily impact marine mammals in the area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (*e.g.,* snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (*e.g.,* feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥40 dB (that is, 40 dB of TTS).

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days, can be limited to a particular frequency range, and can occur to varying degrees (*i.e.,* a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in 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 takes place during a time when the animals is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena phocaenoides*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) 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 and 2010; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Mooney *et al.,* 2009; Popov *et al.,* 2011; Finneran and Schlundt, 2010). 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. However, even for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB RMS or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.,* 2009). 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 Finneran (2015).

Scientific literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower sound pressure levels (SPL)) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to sub-bottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends; intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.,* 2010). NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system.

Animals in the Lease Area during the HRG survey are unlikely to incur TTS hearing impairment due to the characteristics of the sound sources, which include low source levels (208 to 221 dB re 1 μPa-m) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the majority of the geophysical survey equipment planned for use (Table 1) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey (Tyack 2000). Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.,* 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Myrberg 1978; Desharnais *et al.,* 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.,* 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales, because of how far low-frequency sounds propagate.

Marine mammal communications would not likely be masked appreciably by the sub-bottom profiler signals given the directionality of the signals (for most geophysical survey equipment types planned for use (Table 1)) and the brief period when an individual mammal is likely to be within its beam.

Non-Auditory Physical Effects (Stress)

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers

stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine 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 (Moberg 1987; Rivier 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic 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 a risk to the animal's welfare. 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 biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle 1950) or ''allostatic loading'' (McEwen and Wingfield 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker 2000; Romano *et al.,* 2002). 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.

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and

transitory HRG and geotechnical activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Behavioral Disturbance

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 shown 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 have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,*

1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; 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.

Marine mammals are likely to avoid the HRG survey activity, especially the naturally shy harbor porpoise, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers and other HRG survey equipment operate from a moving vessel, and the maximum radius to the Level B harassment threshold is relatively small, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated HRG-related impacts within the survey area.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Atlantic Shores's use of HRG survey equipment, on the basis of a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many km. However, other studies have shown that marine mammals at distances more than a few

km away often show no apparent response to industrial activities of various types (Miller *et al.,* 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (*e.g.,* Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl 2000; Croll *et al.,* 2001; Jacobs and Terhune 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 miles (0.25–0.5 km). Due to the relatively high vessel traffic in the Lease Area it is possible that marine mammals are habituated to noise (*e.g.,* DP thrusters) from project vessels in the area.

Vessel Strike

Ship strikes of marine mammals can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.,* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kn). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical and geotechnical surveys. Marine mammals would be able to easily avoid the survey vessel due to the slow vessel speed. Further, Atlantic Shores would implement measures (*e.g.,* protected species monitoring, vessel speed restrictions and separation distances; see **Proposed Mitigation**) set forth in the BOEM lease to reduce the risk of a vessel strike to marine mammal species in the survey area.

Marine Mammal Habitat

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be expected to be short term and temporary.

Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Impacts on marine mammal habitat from the proposed activities will be temporary, insignificant, and discountable.

Estimated Take

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

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), 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.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B

harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Atlantic Shores's proposed activity includes the use of impulsive sources (geophysical survey equipment) therefore use of the 120 and 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Atlantic Shores's proposed activity that may result in the take of marine mammals include the use of impulsive sources.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed survey would entail the use of HRG equipment. The distance to the isopleth corresponding to the threshold for Level B harassment was calculated for all HRG equipment with the potential to result in harassment of marine mammals. NMFS has developed an interim methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment (NMFS, 2019). This methodology incorporates frequency and some directionality to refine estimated ensonified zones. Atlantic Shores used the methods specified in the interim methodology (NMFS, 2019) with additional modifications to incorporate a seawater absorption formula and a method to account for energy emitted outside of the primary beam of the source. For sources that operate with different beam widths, the maximum beam width was used. The lowest frequency of the source was used when calculating the absorption coefficient. The formulas used to apply the methodology are described in detail in Appendix B of the IHA application.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the proposed surveys and the sound levels associated with those HRG equipment types. Table 2–2 in the IHA application shows the literature sources for the sound source levels that are shown in Table 1 and that were incorporated into the modeling of Level B isopleth distances to the Level B harassment threshold.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Atlantic Shores that has the potential to result in harassment of marine mammals, sound produced by the Applied Acoustics Dura-Spark 240 sparker would propagate furthest to the

Level B harassment threshold (Table 5); therefore, for the purposes of the exposure analysis, it was assumed the Applied Acoustics Dura-Spark 240 would be active during the entire duration of the surveys. Thus the distance to the isopleth corresponding to the threshold for Level B harassment for the Applied Acoustics Dura-Spark 240 (estimated at 372 m; Table 5) was used as the basis of the take calculation for all marine mammals. Note that this results in a conservative estimate of the total ensonified area resulting from the proposed activities as Atlantic Shores may not operate the Applied Acoustics Dura-Spark 240 during the entire proposed survey, and for any survey segments in which it is not ultimately operated the distance to the Level B harassment threshold would be less than 372 m (Table 5). However, as Atlantic Shores cannot predict the precise number of survey days that will require the use of the Applied Acoustics Dura-Spark 240, it was assumed that it would operated during the entire duration of the proposed surveys.

TABLE 5—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS

Sound source	Radial distance to level A harassment threshold (m)*				Radial distance to Level B harassment threshold (m)
	Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Phocid pinnipeds (underwater)	All marine mammals
Kongsberg EA 400	<1	2	213	<1	172
Teledyne ODOM Echotrac CVM	<1	1	220	<1	173
Applied Acoustics Dura-Spark 240	1	<1	9	1	372
Edgetech 2000–DSS	<1	<1	<1	<1	4
Edgetech 216	<1	<1	<1	<1	5
Edgetech 424	<1	<1	<1	<1	6
Edgetech 512i	<1	<1	<1	<1	7
Teledyne Benthos Chirp III	n/a	n/a	n/a	n/a	71
Kongsberg GeoPulse	n/a	n/a	n/a	n/a	231
Innomar SES–2000 Medium-100 Parametric	<1	<1	60	<1	116
Applied Acoustics S-Boom Triple Plate	<1	<1	38	<1	97
Applied Acoustics S-Boom	<1	<1	13	<1	56

* Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown. For the Applied Acoustics Dura-Spark 240 the peak SPL metric resulted in larger isopleth distances; for all other sources the SEL_{cum} metric resulted in larger isopleth distances.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 4), were also calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* the metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Modeling of distances to isopleths corresponding to the Level A harassment threshold was performed for all types of HRG equipment proposed for use with the potential to result in harassment of marine mammals. Atlantic Shores used a new model developed by JASCO to calculate distances to Level A harassment isopleths based on both the peak SPL and the SEL_{cum} metric. For the peak SPL metric, the model is a series of equations that accounts for both seawater absorption and HRG equipment beam patterns (for all HRG sources with beam widths larger than 90°, it was assumed these sources were omnidirectional). For the SEL_{cum} metric, a model was developed that accounts for the hearing sensitivity of the marine mammal group, seawater absorption, and beam width for downwards-facing transducers. Details of the modeling methodology for both the peak SPL and SEL_{cum} metrics are provided in Appendix A of the IHA application. This model entails the following steps:

1. Weighted broadband source levels were calculated by assuming a flat spectrum between the source minimum and maximum frequency, weighted the spectrum according to the marine mammal hearing group weighting function (NMFS 2018), and summed across frequency.

2. Propagation loss was modeled as a function of oblique range.

3. Per-pulse SEL was modeled for a stationary receiver at a fixed distance off a straight survey line, using a vessel transit speed of 3.5 knots and source-specific pulse length and repetition rate. The off-line distance is referred to as the closest point of approach (CPA) and was performed for CPA distances between 1 m and 10 km. The survey line length was modeled as 10 km long (analysis showed longer survey lines increased SEL by a negligible amount). SEL is calculated as $SPL + 10 \log_{10} T/15$ dB, where T is the pulse duration.

4. The SEL for each survey line was calculated to produce curves of weighted SEL as a function of CPA distance.

5. The curves from Step 4 above were used to estimate the CPA distance to the impact criteria.

We note that in the modeling methods described above and in Appendix A of the IHA application, sources that operate with a repetition rate greater than 10 Hz were assessed with the non-impulsive (intermittent) source criteria while sources with a repetition rate equal to or less than 10 Hz were assessed with the impulsive source criteria. NMFS does not necessarily agree with this step in the modeling

assessment, which results in nearly all HRG sources being classified as impulsive; however, we note that the classification of the majority of HRG sources as impulsive results in more conservative modeling results. Thus, we have assessed the potential for Level A harassment to result from the proposed activities based on the modeled Level A zones with the acknowledgement that these zones are likely conservative.

Modeled isopleth distances to Level A harassment thresholds for all types of HRG equipment and all marine mammal functional hearing groups are shown in Table 5. The dual criteria (peak SPL and SEL_{cum}) were applied to all HRG sources using the modeling methodology as described above, and the largest isopleth distances for each functional hearing group were then carried forward in the exposure analysis to be conservative. For the Applied Acoustics Dura-Spark 240 the peak SPL metric resulted in larger isopleth distances; for all HRG sources other than the Applied Acoustics Dura-Spark 240, the SEL_{cum} metric resulted in larger isopleth distances. Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown in Table 5.

Modeled distances to isopleths corresponding to the Level A harassment threshold are very small (< 3 m) for three of the four marine mammal functional hearing groups that may be impacted by the proposed activities (*i.e.,* low frequency and mid frequency cetaceans, and phocid pinnipeds; see Table 5). Based on the very small Level A harassment zones for these functional hearing groups, the potential for species within these functional hearing groups to be taken by Level A harassment is considered so low as to be discountable. These three functional hearing groups encompass all but one of the marine mammal species listed in Table 3 that may be impacted by the proposed activities. There is one species (harbor porpoise) within the high frequency functional hearing group that may be impacted by the proposed activities. The largest modeled distance to the Level A harassment threshold for the high frequency functional hearing group was 220 m (Table 5). However, as noted above, modeled distances to isopleths corresponding to the Level A harassment threshold are assumed to be conservative. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and mitigation measures—including a 100-m exclusion zone for harbor porpoises—are expected to minimize the potential for close approach or longer duration exposure to active HRG sources. In addition, harbor porpoises are a notoriously shy species which is known to avoid vessels, and would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, we have determined that the potential for take by Level A harassment of harbor porpoises is so low as to be discountable. As NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the proposed surveys is so low as to be discountable, we therefore do not propose to authorize the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the proposed survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. More information, including the model results and supplementary information for each model, is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* Marine mammal density estimates in the project area (animals/km^2) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018). The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016).

For the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018) were mapped using a geographic information system (GIS). The density coverages that included any portion of the proposed project area were selected for all potential survey months. For each of the survey areas (*i.e.,* Lease Area, CER North and ECR South), the densities of each species as reported by Roberts *et al.* (2016, 2017, 2018) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. Estimated seasonal densities (animals per km^2) of all marine mammal species that may be taken by the proposed survey, for all survey areas are shown in Tables B–1, B–2 and B–3 in Appendix C of the IHA application. The maximum seasonal density values used to estimate take numbers are shown in Table 6 below.

For bottlenose dolphin densities, Roberts *et al.* (2016, 2017, 2018) does not differentiate by stock. The Western North Atlantic northern migratory coastal stock only occurs in coastal waters from the shoreline to approximately the 20-m isobath (Hayes *et al.* 2018). As the Lease Area is located within depths exceeding 20-m, where only the offshore stock would be expected to occur, all calculated bottlenose dolphin exposures within the Lease Area were assigned to the offshore stock. However, both stocks have the potential to occur in the ECR North and ECR South survey areas. To account for the potential for mixed stocks within ECR North and South, the survey areas ECR North and South were divided approximately along the 20-m depth isobath, which roughly corresponds to the 10-fathom contour on NOAA navigation charts. As approximately 33 percent of ECR North and ECR South are 20-m or less in depth, 33 percent of the estimated take calculation for bottlenose dolphins was applied to the Western North Atlantic northern migratory coastal stock and the remaining 67 percent was applied to the offshore stock. Similarly, Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the survey areas, it was assumed that modeled takes of seals could occur to either of the respective species, thus the total number of modeled takes for seals was applied to each species.

TABLE 6—MAXIMUM SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 KM²) IN THE SURVEY AREAS

Species	Lease area	ECR north	ECR south
North Atlantic right whale	0.087	0.068	0.073
Humpback whale	0.076	0.082	0.103
Fin whale	0.100	0.080	0.057
Sei whale	0.004	0.004	0.002
Minke whale	0.055	0.017	0.019
Sperm Whale	0.013	0.005	0.003
Long-finned pilot whale	0.036	0.012	0.009
Bottlenose dolphin (W. N. Atlantic Coastal Migratory)	.....	21.675	58.524
Bottlenose dolphin (W. N. Atlantic Offshore)	21.752	21.675	58.524
Common dolphin	3.120	1.644	1.114
Atlantic white-sided dolphin	0.487	0.213	0.152
Atlantic spotted dolphin	0.076	0.059	0.021
Risso's dolphin	0.010	0.001	0.002
Harbor porpoise	2.904	7.357	2.209
Gray seal	4.918	9.737	6.539
Harbor seal	4.918	9.737	6.539

Note: All density values derived from Roberts *et al.* (2016, 2017, 2018). Densities shown represent the maximum seasonal density values calculated.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel.

Atlantic Shores estimates that proposed surveys will achieve a maximum daily track line distance of 85 km per day during proposed HRG surveys. This distance accounts for the vessel traveling at approximately 3.5 kn and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 372 m (Table 5) and the maximum estimated daily track line distance of 85 km, an area of 63.675 km² would be ensonified to the Level B harassment threshold per day during Atlantic Shores' proposed surveys. As described above, this is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km²), incorporating the estimated marine mammal densities as described above. Estimated numbers of each species taken per day are then multiplied by the total number of survey days (*i.e.,* 350). The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \#\text{ of days}$$

Where: D = average species density (per km²) and ZOI = maximum daily ensonified area to relevant thresholds.

TABLE 7—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Proposed takes by level A harassment	Estimated takes by level B harassment	Proposed takes by level B harassment	Total takes proposed for authorization	Total proposed instances of take as a percentage of population [1]
North Atlantic right whale	0	18	9	9	2.2
Humpback whale	0	18	18	18	1.1
Fin whale	0	20	20	20	0.4
Sei whale	0	1	1	1	0.1
Minke whale	0	9	9	9	0.4
Sperm whale [2]	0	2	3	3	0.1
Long-finned pilot whale	0	6	6	6	0.0
Bottlenose dolphin (W.N. Atlantic Coastal Migratory)	0	1,102	1,102	1,102	16.6
Bottlenose dolphin (W.N. Atlantic Offshore)	0	5,113	5,113	5,113	8.1
Common dolphin	0	544	544	544	0.6
Atlantic white-sided dolphin	0	82	82	82	0.2
Atlantic spotted dolphin [2]	0	14	100	100	0.2
Risso's Dolphin [2]	0	2	6	6	0.1
Harbor porpoise	0	115	115	115	0.3
Harbor seal	0	1,404	1,404	1,404	1.9

TABLE 7—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION—Continued

Species	Proposed takes by level A harassment	Estimated takes by level B harassment	Proposed takes by level B harassment	Total takes proposed for authorization	Total proposed instances of take as a percentage of population [1]
Gray seal	0	1,404	1,404	1,404	0.3

[1] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 3. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.,* 2019). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins, gray and harbor seals are derived from NMFS SARs (Hayes *et al.,* 2019).

[2] The proposed number of authorized takes (Level B harassment only) for these species has been increased from the estimated take number to mean group size. Sources for mean group size estimates are as follows: Risso's dolphin: Palka *et al.* (2018); Atlantic spotted dolphin: Herzing and Perrin (2018); sperm whale: Barkaszi and Kelly (2019).

The numbers of takes proposed for authorization are shown in Table 7. Atlantic Shores did not request take authorization for four marine mammal species for which takes by Level B harassment were calculated based on the modeling approach described above: North Atlantic right, fin, sei, and sperm whale. Though the modeling resulted in estimates of take for these species as shown in Table 7, Atlantic Shores determined that take of these species could be avoided due to mitigation. However, given the size of modeled Level B harassment zone, the duration of the proposed surveys, and the fact that surveys will occur 24 hours per day, NMFS is not confident that all takes of these species could be avoided due to mitigation, and we therefore propose to authorize the number of Level B takes modeled for these species, as shown in Table 7. For fin, sei, and sperm whales we propose to authorize the number of takes modeled. For North Atlantic right whale, we propose to authorize 50 percent of the takes modeled, as we expect that proposed mitigation measures, including a 500-m exclusion zone for right whales (which exceeds the Level B harassment zone by over 100-m) will be effective in reducing the potential for takes by Level B harassment.

As described above, Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. The take calculation methodology as described above resulted in an estimate of 1,404 total seal takes. Based on this estimate, Atlantic Shores requested 1,404 takes each of harbor and gray seals, based on an assumption that the modeled takes could occur to either of the respective species. We think this is a reasonable approach and therefore propose to authorize the take numbers as shown in Table 7.

Using the take methodology approach described above, the take estimates for Risso's dolphin, spotted dolphin and sperm whale were less than the average group sizes estimated for these species (Table 7). However, information on the social structures of these species indicates these species are likely to be encountered in groups. Therefore it is reasonable to conservatively assume that one group of each of these species will be taken during the proposed survey. We therefore propose to authorize the take of the average group size for these species to account for the possibility that the proposed survey encounters a group of either of these species (Table 7).

As described above, NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the proposed surveys is so low as to be discountable; therefore, we do not propose to authorize take of any marine mammals by Level A harassment.

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.

Proposed Mitigation Measures

NMFS proposes the following mitigation measures be implemented during Atlantic Shores's proposed marine site characterization surveys.

Marine Mammal Exclusion Zones, Buffer Zone and Monitoring Zone

Marine mammal exclusion zones (EZ) would be established around the HRG

survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- A 500-m EZ would be required for North Atlantic right whales; and
- A 100-m EZ would be required for all other marine mammals.

If a marine mammal is detected approaching or entering the EZs during the proposed survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200 m Buffer Zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the Buffer Zone (but outside the EZs) would be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone. In addition, any marine mammals observed within 372 m of the HRG equipment would be documented by PSOs as taken by Level B harassment. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

A minimum of one NMFS-approved PSO must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of HRG equipment. Visual monitoring would begin no less than 30 minutes prior to ramp-up of HRG equipment and would continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs would estimate distances to marine mammals located in proximity to the vessel and/or relevant using range finders. It would be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data would be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Atlantic Shores would implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone would also act as an extension of the 100 m EZ in that observations of marine mammals within the 200 m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs would ensure that no marine mammals are observed within 200 m of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment would not start up until this 200 m zone (or, 500 m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator would notify a designated PSO of the planned start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO conducting pre-clearance observations would be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HEG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

Shutdown Procedures

If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. When shutdown is called for by a PSO, the acoustic source would be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty would have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for large whales).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable), or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and

no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, Stenella, and Tursiops)* under certain circumstances. If a delphinid(s) from these genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed survey equipment, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs would use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (372 m), shutdown would occur.

Vessel Strike Avoidance

Vessel strike avoidance measures would include, but would not be limited to, the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators and crew will maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes: Any DMAs when in effect, and the Mid-Atlantic SMA off the entrance to New York harbor (from November 1 through April 30);
- All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;
- All survey vessels will maintain a separation distance of 500 m (1640 ft) or greater from any sighted North Atlantic right whale;
- If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500 m (1640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m;
- All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean. Any vessel underway remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and
- All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Atlantic Shores will ensure that vessel operators and crew maintain a vigilant watch for marine mammals by slowing down or stopping the vessel to avoid striking marine mammals. Project-specific training will be conducted for all vessel crew prior to the start of survey activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey activities.

Seasonal Operating Requirements

As described above, the section of the proposed survey area partially overlaps with a portion of a North Atlantic right whale SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 kn) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Members of the monitoring team would also monitor the NMFS North Atlantic right whale reporting systems for the establishment of Dynamic Management Areas (DMA). If NMFS should establish a DMA in the survey area while surveys are underway, Atlantic Shores would contact NMFS within 24 hours of the establishment of the DMA to determine whether alteration of survey activities was warranted to avoid right whales to the extent possible.

The proposed mitigation measures are designed to avoid the already low potential for injury in addition to some instances of Level B harassment, and to minimize the potential for vessel strikes. Further, we believe the proposed mitigation measures are practicable for the applicant to implement. Atlantic Shores has proposed additional mitigation measures in addition to the measures described above; for information on the measures proposed by Atlantic Shores, see Section 11 of the IHA application.

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The proposed survey would occur in an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area, the survey is not expected to appreciably reduce migratory habitat nor to negatively impact the migration of North Atlantic right whales, thus mitigation to address the proposed survey's occurrence in North Atlantic right whale migratory habitat is not warranted.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS,

NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

As described above, visual monitoring would be performed by qualified and NMFS-approved PSOs. Atlantic Shores would use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Atlantic Shores would provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval at least 45 days prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty and conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and nighttime ramp-ups of HRG equipment. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all survey vessels.

PSOs would be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. Position data would be recorded using hand-held or vessel GPS units for each sighting. Observations would take place from the highest available vantage point on the survey vessel. General 360-degree scanning would occur during the monitoring periods, and target scanning by the PSO would occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In addition to the final technical report, Atlantic Shores will provide the reports described below as necessary during survey activities. In the unanticipated event that Atlantic Shores' activities lead to an injury (Level A harassment) of a marine mammal, Atlantic Shores would immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources Permits and Conservation Division and the NMFS New England/Mid-Atlantic Stranding Coordinator. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;

- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. NMFS would work with Atlantic Shores to minimize reoccurrence of such an event in the future. Atlantic Shores would not resume activities until notified by NMFS.

In the event that Atlantic Shores personnel discover an injured or dead marine mammal, Atlantic Shores would report the incident to the OPR Permits and Conservation Division and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores would report the incident to the NMFS OPR Permits and Conservation Division and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature.

NMFS does not anticipate that serious injury or mortality would occur as a result of Atlantic Shores's proposed survey, even in the absence of proposed mitigation, thus the proposed authorization does not authorize any serious injury or mortality. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. Additionally and as discussed previously, given the nature of activity and sounds sources used and especially in consideration of the required mitigation, Level A harassment is neither anticipated nor authorized. We expect that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area, reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where the survey is occurring. We expect that any avoidance of the survey area by marine mammals would be temporary in nature and that any marine mammals that avoid the survey area during the survey activities would not be permanently displaced. Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Instances of more severe behavioral harassment are expected to be minimized by proposed mitigation and monitoring measures.

In addition to being temporary and short in overall duration, the acoustic footprint of the proposed survey is small relative to the overall distribution of the animals in the area and their use of the area. Feeding behavior is not likely to be significantly impacted. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be

temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area and there are no feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the proposed survey area. The proposed survey area overlaps a portion of a biologically important migratory area for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the coasts of Delaware and Maryland, this biologically important migratory area extends from the coast to beyond the shelf break. Due to the fact that that the proposed survey is temporary and the spatial extent of sound produced by the survey would very small relative to the spatial extent of the available migratory habitat in the area, right whale migration is not expected to be impacted by the proposed survey.

As described above, North Atlantic right, humpback, and minke whales, and gray and harbor seals are experiencing ongoing UMEs. For North Atlantic right whales, as described above, no injury as a result of the proposed project is expected or proposed for authorization, and Level B harassment takes of right whales are expected to be in the form of avoidance of the immediate area of the proposed survey. In addition, the number of takes proposed for authorization above the Level B harassment threshold are relatively low (*i.e.,* 18), and the take numbers proposed for authorization do not account for the proposed mitigation measures, which would require shutdown of all survey equipment upon observation of a right whale prior to their entering the zone that would be ensonified above the Level B harassment threshold. As no injury or mortality is expected or proposed for authorization, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, the proposed authorized takes of right whales would not exacerbate or compound the ongoing UME in any way.

Similarly, no injury or mortality is expected or proposed for authorization for any of the other species with UMEs, Level B harassment will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, and the proposed authorized takes would not exacerbate or compound the ongoing UMEs. For minke whales, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Even though the PBR value is based on an abundance for U.S. waters that is negatively biased and a small fraction of the true population abundance, annual M/SI does not exceed the calculated PBR value for minke whales. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland, was delisted. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth. With regard to gray and harbor seals, although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance in the United States is over 27,000, with an estimated abundance including seals in Canada of approximately 505,000, and abundance is likely increasing in the U.S. Atlantic EEZ as well as in Canada (Hayes *et al.,* 2018).

The proposed mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy; (2) preventing animals from being exposed to sound levels that may otherwise result in injury or more severe behavioral responses. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the survey area.

NMFS concludes that exposures to marine mammal species and stocks due to Atlantic Shores's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury, or Level A harassment is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would primarily be in the form of temporary behavioral changes due to avoidance of the area around the survey vessel;
- The availability of alternate areas of similar habitat value (for foraging, etc.) for marine mammals that may temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The proposed project area does not contain known areas of significance for mating or calving;
- Effects on species that serve as prey species for marine mammals from the proposed survey would be minor and temporary and would not be expected to reduce the availability of prey or to affect marine mammal feeding;
- The proposed mitigation measures, including visual and acoustic monitoring, exclusion zones, and shutdown measures, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the

specified activity on marine mammals and their habitat, and taking into consideration the implementation of the 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 sections 101(a)(5)(A) and (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.

We propose to authorize incidental take of 16 marine mammal stocks. The total amount of taking proposed for authorization is less than 17 percent for one of these stocks, and less than 9 percent for all remaining stocks (Table 7), which we consider to be relatively small percentages and we preliminarily find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of all 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 determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei, and sperm whale. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. The Biological Opinion can be found online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the proposed issuance of the authorization. If the IHA is issued, the Biological Opinion may be amended to include an incidental take statement for these marine mammal species, as appropriate.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores for conducting marine site characterization activities offshore of New York and New Jersey for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for Atlantic Shores' proposed activity. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 5, 2020.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02661 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA036]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, February 26, 2020 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; telephone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel will receive an update on Framework Adjustment 32 submission and 2020 scallop work priorities. The panel plans to discuss 2019 fishery performance and outlook for 2020. They will also talk about Amendment 21: Reviewing progress in 2019 and discuss outlook for 2020. They also plan to review Plan Development Team (PDT) progress on Committee tasking and develop input on range of alternatives. The focus on this discussion will primarily be about Northern Gulf of Maine measures. The Advisory Panel and Committee will have additional discussion on Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) trip limits and the one-way transfer of IFQ from Limited Access (LA) to LAGC at the March 26 and 27, 2020 meetings. They plan to discuss modifications to scallop dredge exemption areas, status of type-approved vessel monitoring system (VMS) units, and implications of larger crew limits on trips to the Nantucket Lightship South Deep (NLS-S-deep) area on ability of vessels to carry observers (lift raft capacity). Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: February 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02775 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA038]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan Climate Change Taskforce will meet February 26, 2020 through February 28, 2020.

DATES: The meeting will be held on Wednesday, February 26, 2020, from 9 a.m. to 4 p.m., from 9 a.m. to 4 p.m. on February 27, 2020 and from 9 a.m. to 4 p.m. on February 28, 2020, Alaska Standard Time.

ADDRESSES: The meeting will be held both in Anchorage and Seattle at the following locations: North Pacific Fishery Management Council, 1007 West Third Ave., Suite 400, and at the Alaska Fishery Science Center (room TBD), 7600 Sand Point Way NE, Building 4, Seattle, WA 98115. For those unable to attend the meeting in person, you can access the meeting via audio/video conferencing. Access information posted at *https://meetings.npfmc.org/Meeting/Details/1303* prior to the meeting, along with meeting materials.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2806.

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, February 26, 2020 Through Friday, February 28, 2020

The agenda will include (a) develop conceptual framework; (b) revise workplan and develop one page briefing reports in preparation for climate knowledge briefing in May; (c) begin development of ecological and socio economic indicators of climate change; (d) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1303* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to *https://meetings.npfmc.org/Meeting/Details/1303* or through the mail: North Pacific Fishery Management Council, North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone (907) 271–2809.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

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

Dated: February 7, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–02799 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR078]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Massachusetts, Rhode Island, Connecticut, and New York

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 Vineyard Wind, LLC (Vineyard Wind) for authorization to take marine mammals incidental to marine site characterization surveys of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, and New York. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 13, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* 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: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 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 proposed action qualifies to be categorically excluded from further NEPA review.

Information in Vineyard Wind's application and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On October 24, 2019, NMFS received a request from Vineyard Wind for an IHA to take marine mammals incidental to marine site characterization surveys offshore of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine offshore export cable corridors (OECC) to a landfall locations in Massachusetts, Rhode Island, Connecticut, and New York. NMFS deemed that request to be adequate and complete on January 7, 2020. Vineyard Wind's request is for the take of 14 marine mammal species by Level B harassment that would occur over the course of up to 365 calendar

days. Neither Vineyard Wind nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of the Proposed Activity

Overview

Vineyard Wind proposes to conduct high-resolution geophysical (HRG) surveys in support of offshore wind development projects in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (#OCS–A 0501 and #OCS–A 0522) (Lease Areas) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York.

The purpose of the marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind's proposed site characterization surveys has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The estimated duration of the activity is expected to be up to 365 survey days between April 1, 2020 and March 31, 2021. This schedule is based on 24-hour operations and includes potential down time due to inclement weather. With up to eight survey vessels operating concurrently, a maximum of 736 vessels days are anticipated.

Specific Geographic Region

Vineyard Wind's survey activities would occur in the Northwest Atlantic Ocean within Federal waters. The area includes Lease Area OCS–A 0501, located approximately 24 kilometers (km) (13 nautical miles [nm]) from the southeast corner of Martha's Vineyard and Lease Area OCS–A 0522, located approximately 46 km (25 nm) south of Nantucket. Additionally, OECC routes may also be surveyed within the area depicted in Figure 1.

Water depths across the lease areas range from approximately 35 to 63 meters (m) (115 to 207 feet [ft]); potential offshore export cable corridor (OECC) routes in the Project Area will be evaluated and will extend from the lease areas to shallow water areas near potential landfall locations in Massachusetts, Rhode Island, Connecticut, and New York as shown in Figure 1.

HRG survey activities south of Cape Cod are anticipated to begin on April 1, 2020 and will last for up to one year. HRG survey activities proposed for north and northeast of Cape Cod will be conducted exclusively during the months of August and September when North Atlantic right whales (NARWs; *Eubalaena glacialis*) are not anticipated to be present (Roberts *et al.* 2018).

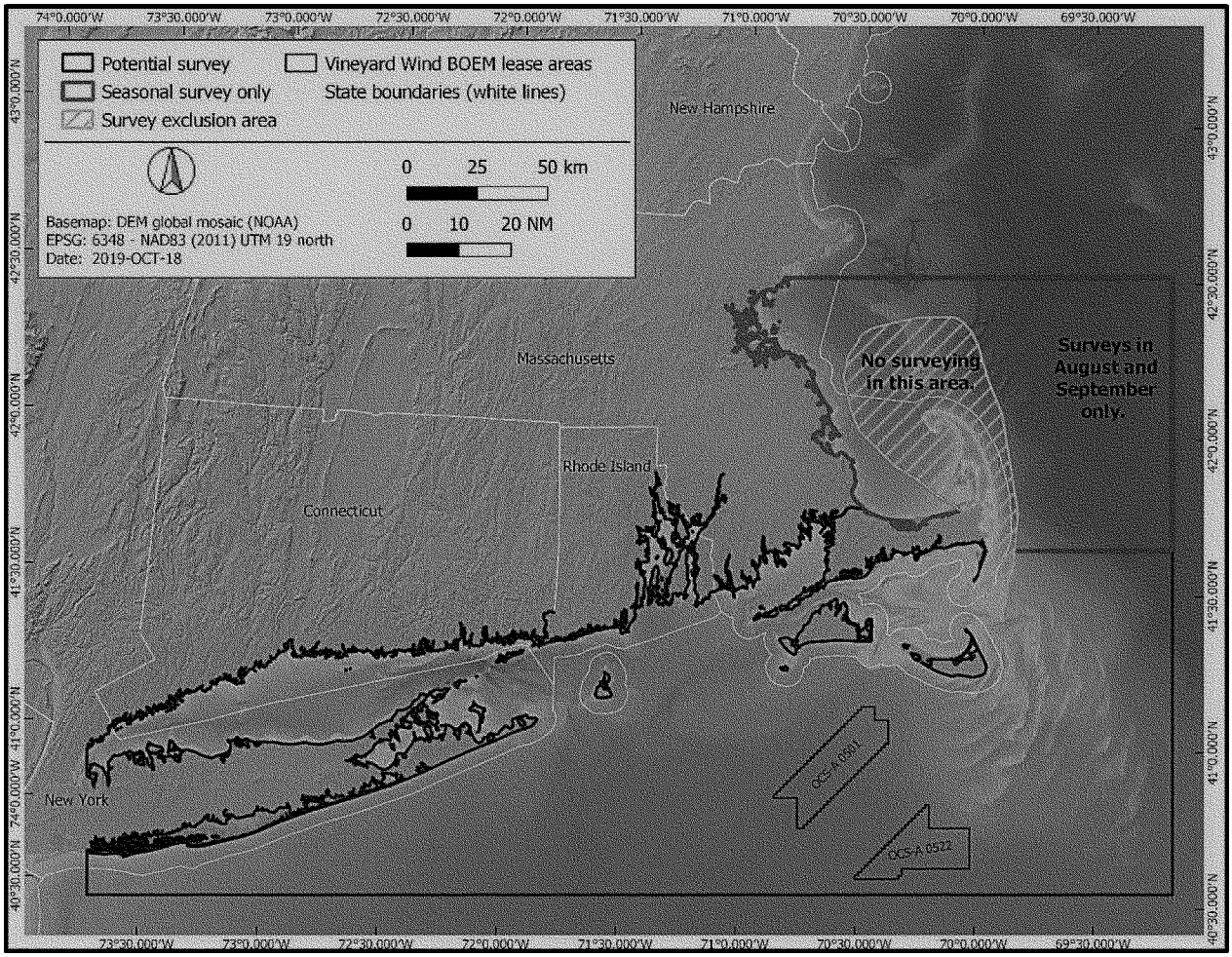

Figure 1. Project Area Location

Detailed Description of the Specified Activities

Vineyard Wind's proposed marine site characterization surveys include high-resolution geophysical (HRG) survey activities. Water depths in the Lease Areas range from 35 to 63 m (115 to 207 ft). Water depths along the potential OECC routes range from 5 to greater than 200 m (16 to >656 ft). The OECC routes will extend from the lease areas to shallow water areas near potential landfall locations in Massachusetts, Rhode Island, Connecticut, and New York.

HRG equipment will be deployed from multiple vessels acquiring data concurrently within the HRG Project Area (Figure 1). HRG survey activities south of Cape Cod are anticipated to begin on April 1, 2020 and will last for up to 365 calendar days with a total of 736 vessel days. HRG survey activities proposed for north and northeast of Cape Cod will be conducted exclusively during the months of August and September when North Atlantic right whales (NARWs; *Eubalaena glacialis*) are not anticipated to be present (Nichols *et al.* 2008). For the purpose of this IHA the Lease Areas and submarine cable corridor are collectively termed the Project Area.

Geophysical survey activities are anticipated to include as many as eight survey vessels which may be operating concurrently. Survey vessels would maintain a speed of approximately 4 knots (kn) while transiting survey lines and each vessel would cover approximately 100 km per day. The proposed HRG survey activities are described below.

Geophysical Survey Activities

Vineyard Wind has proposed that HRG survey operations would be conducted continuously 24 hours per day. Based on 24-hour operations, the estimated duration of the geophysical survey activities would be up to 365 calendar days with a total of 736 total survey vessel days (including estimated weather down time). As many as eight survey vessels may be used concurrently during Vineyard Wind's proposed surveys. The geophysical survey activities proposed by Vineyard Wind would include the following:

- Shallow Penetration Sub-bottom Profilers (SBP; Chirps) to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 ft) of sediment below seabed). A chirp system emits sonar pulses that increase in frequency over time. The pulse length frequency range can be adjusted to meet project variables. Typically mounted on the hull of the vessel or from a side pole.
- Medium Penetration SBPs (Boomers) to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 Hz to 10 kHz frequency range. This system is typically mounted on a sled and towed behind the vessel.
- Medium Penetration SBPs (Sparkers) to map deeper subsurface stratigraphy as needed. Sparkers create acoustic pulses from 50 Hz to 4 kHz omni-directionally from the source that can penetrate several hundred meters into the seafloor. Typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals.
- Parametric SBPs, also called sediment echosounders, for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. Typically mounted on the hull of the vessel or from a side pole.
- Multibeam Echosounders (MBESs) to determine water depths and general bottom topography. MBES sonar systems project sonar pulses in several angled beams from a transducer mounted to a ship's hull. The beams radiate out from the transducer in a fan-shaped pattern orthogonally to the ship's direction.
- Ultra-Short Baseline (USBL) Positioning and Global Acoustic Positioning System (GAPS) to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and the equipment transponder necessary to produce the acoustic profile. It is a two-component system with a hull or pole mounted transceiver and one to several transponders either on the seabed or on the equipment.
- Side-scan Sonar (SSS) for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The sonar device emits conical or fan-shaped pulses down toward the seafloor in multiple beams at a wide angle, perpendicular to the path of the sensor through the water. The acoustic return of the pulses is recorded in a series of cross-track slices, which can be joined to form an image of the sea bottom within the swath of the beam. They are typically towed beside or behind the vessel or from an autonomous vehicle.

Table 1 identifies the representative survey equipment that may be used in support of proposed geophysical survey activities that operate below 180 kilohertz (kHz) and have the potential to cause acoustic harassment to marine species, including marine mammals, and therefore require the establishment and monitoring of exclusion zones.

HRG surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 1—SUMMARY OF GEOPHYSICAL SURVEY EQUIPMENT PROPOSED FOR USE BY VINEYARD WIND

HRG equipment category	Specific HRG equipment	Operating frequency (kHz)	Beam width (°)	Source level (dB rms)	Peak source level (dB re 1 μPa m)	Pulse duration (ms)	Repetition rate (Hz)
Shallow subbottom profiler	EdgeTech Chirp 216	2–10	65	178	182	2	3.75
	Innomar SES 2000 Medium	85–115	2	241	247	2	40
Deep seismic profiler	Applied Acoustics AA251 Boomer.	0.2–15	180	205	212	0.9	2
	GeoMarine Geo Spark 2000 (400 tip).	0.25–5	180	206	214	2.8	1
Underwater positioning (USBL)	SonarDyne Scout Pro	35–50	180	188	191	Unknown	Unknown
	ixBlue Gaps	20–32	180	191	194	1	10

The deployment of HRG survey equipment, including the equipment anticipated for use during Vineyard Wind's proposed activity, produces sound in the marine environment that has the potential to result in harassment of marine mammals. However, sound propagation in water is dependent on several factors including operating mode, frequency and beam direction of the HRG equipment; thus, potential impacts to marine mammals from HRG

equipment are driven by the specification of individual HRG sources. The specifications of the potential equipment proposed for use during HRG survey activities (Table 1) were analyzed to determine which types of equipment would have the potential to result in harassment of marine mammals.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of Specified Activity

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in the Project Area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or Project Area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in either the 2018 Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.,* 2019a), available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region* or and draft 2019 Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.* 2019b) available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND'S PROPOSED ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic Right whale	*Eubalaena glacialis*	Western North Atlantic (WNA)	E/D; Y	409 [4] (0; 445; 2017)	0.9	5.56
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; N	1,396 (0; 1,380; See SAR)	22	12.15
Fin whale	*Balaenoptera physalus*	WNA	E/D; Y	7,418 (0.25; 6,029; See SAR)	12	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.015; 3,098; See SAR)236	6.2	1
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	24,202 (0.3; 18,902; See SAR)	1,189	8
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	NA	E; Y	4,349 (0.28; 3,451; See SAR)	6.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	WNA	-/-; Y	5,636 (0.63; 3,464)	35	38
Bottlenose dolphin	*Tursiops spp.*	WNA Offshore	-/-; N	62,851 (0.23; 51,914; Ses SAR)	591	28
Common dolphin	*Delphinus delphis*	WNA	-/-; N	172,825 (0.21; 145,216; See SAR)	1,452	419
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	WNA	-/-; N	92,233 (0.71; 54,433; See SAR)	544	26
Risso's dolphin	*Grampus griseus*	WNA	-/-; N	35,493 (0.19; 30,289; See SAR)	303	54.3
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; See SAR)	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Gray seal	*Halichoerus grypus*	WNA	-/-; N	27,131 (0.19; 23,158)	1,389	5,688
Harbor seal	*Phoca vitulina*	WNA	-/-; N	75,834 (0.15; 66,884)	345	333

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

2 NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3 These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

4 For the North Atlantic right whale the best available abundance estimate is derived from the 2018 North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.,* 2012).

As described below, 14 species (with 14 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.

The following subsections provide additional information on the biology, habitat use, abundance, distribution, and the existing threats to the non-ESA-listed and ESA-listed marine mammals that are both common in the waters of the outer continental shelf (OCS) of Southern New England and have the

likelihood of occurring, at least seasonally, in the Project Area.

North Atlantic Right Whale

The North Atlantic right whale ranges from the calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Waring *et al.,* 2017). Surveys indicate that there are seven areas where NARWs congregate seasonally: the coastal waters of the southeastern U.S., the Great South Channel, Jordan Basin, Georges Basin along the northeastern edge of Georges Bank, Cape Cod and Massachusetts Bays, the Bay of Fundy, and the Roseway Basin on the Scotian Shelf (Hayes *et al.* 2018). NOAA Fisheries has designated two critical habitat areas for the NARW under the ESA: The Gulf of Maine/Georges Bank region, and the southeast calving grounds from North Carolina to Florida.

Aerial surveys indicated that right whales were consistently detected in or near the Lease Areas and surrounding survey areas during the winter and spring seasons. It appears that right whales begin to arrive in this area in December and remain in the area through at least April. Acoustic detections of right whales occurred during all months of the year, although the highest number of detections typically occurred between December and late May. Data indicate that right whales occur at elevated densities in the Project Area south and southwest of Martha's Vineyard in the spring (March–May) and south of Nantucket during winter (December–February) (Roberts *et al.* 2018; Leiter *et al.* 2017; Kraus *et al.* 2016). Consistent aggregations of right whales feeding and possibly mating within or close to these specific areas is such that they have been considered right whale ''hotspots'' (Leiter *et al.* 2017; Kraus *et al.* 2016). Additionally, numerous Dynamic Management Areas (DMAs) have been established in these areas in recent years. As of this writing a DMA has been established approximately 31 miles due south of Nantucket. Although there is variability in right whale distribution patterns among years, and some aggregations appear to be ephemeral, an analysis of hot spots suggests that there is some regularity in right whale use of the Lease Areas and surrounding Project Area (Kraus *et al.* 2016).

NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. All vessels greater than 19.8 m (65 ft) in overall length must operate at speeds of 10 knots (5.1 m/s) or less within these areas during specific time periods. The Block Island Sound SMA overlaps with the southern portion of Lease Area OCS–A 0501 and is active between November 1 and April 30 each year. The Great South Channel SMA lies to the northeast of Lease Area OCS–A 0501 and is active April 1 to July 31. Potential OECC routes lie within the Cape Cod Bay SMA, which is active between January 1 to May 15, and the Off Race Point SMA, which is active from March 1 to April 30.

NOAA Fisheries may also establish DMAs when and where NARWs are sighted outside SMAs. DMAs are generally in effect for two weeks. During this time, vessels are encouraged to avoid these areas or reduce speeds to 10 knots (5.1 m/s) or less while transiting through these areas.

The lease areas included in the HRG Project Area are encompassed by a right whale Biologically Important Area (BIA) for migration from March to April and from November to December (LaBrecque *et al.* 2015). Designated feeding BIAs occur in Cape Cod Bay from February to April and northeast of the Lease areas from April to June. A map showing designated BIAs is available at: *https://cetsound.noaa.gov/biologically-important-area-map.* Additionally, a small part of the proposed Project Area northeast of Cape Cod includes designated right whale critical habitat.

The western North Atlantic population demonstrated overall growth of 2.8 percent per year from 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.* 2017). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. However, in 2019 at least seven right whale calves were identified while six calves have been recorded in 2020. Unfortunately, one of the calves was struck by a vessel and suffered serious head injuries. It is not likely to survive. Data indicates that the number of adult females fell from 200 in 2010 to 186 in 2015 while males fell from 283 to 272 in the same time frame (Pace *et al.,* 2017). In addition, elevated North Atlantic right whale mortalities have occurred since June 7, 2017. A total of 30 confirmed dead stranded whales (21 in Canada; 9 in the United States), have been documented to date. This event has been declared an Unusual Mortality Event (UME), with human interactions (*i.e.,* fishery-related entanglements and vessel strikes) identified as the most likely cause. More information is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event (accessed January 9, 2020).*

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the Project Area. The best estimate of population abundance for the West Indies DPS is 12,312 individuals, as described in the NMFS Status Review of the Humpback Whale under the Endangered Species Act (Bettridge *et al.,* 2015).

In New England waters, feeding is the principal activity of humpback whales, and their distribution in this region has been largely correlated to abundance of prey species, although behavior and bathymetry are factors influencing foraging strategy (Payne *et al.* 1986, 1990). Humpback whales are frequently piscivorous when in New England waters, feeding on herring (*Clupea harengus*), sand lance (*Ammodytes* spp.), and other small fishes, as well as euphausiids in the northern Gulf of Maine (Paquet *et al.* 1997). During winter, the majority of humpback whales from North Atlantic feeding areas (including the Gulf of Maine) mate and calve in the West Indies, where spatial and genetic mixing among feeding groups occurs, though significant numbers of animals are found in mid- and high-latitude regions at this time and some individuals have

been sighted repeatedly within the same winter season, indicating that not all humpback whales migrate south every winter (Waring *et al.,* 2017). Other sightings of note include 46 sightings of humpbacks in the New York-New Jersey Harbor Estuary documented between 2011 and 2016 (Brown *et al.* 2017). Multiple humpbacks were observed feeding off Long Island during July of 2016 (*https://www.greateratlantic.fisheries.noaa.gov/mediacenter/2016/july/26_humpback_whales_visit_new_york.html,* accessed 31 December, 2018) and there were sightings during November–December 2016 near New York City (*https://www.greateratlantic.fisheries.noaa.gov/mediacenter/2016/december/09_humans_and_humpbacks_of_new_york_2.html,* accessed 31 December 2018).

Kraus *et al.* (2016) observed humpback whales in the RI/MA & MA WEAs and surrounding areas during all seasons. Humpback whales were observed most often during spring and summer months, with a peak from April to June. Calves were observed 10 times and feeding was observed 10 times during the Kraus *et al.* (2016) study. That study also observed one instance of courtship behavior. Although humpback whales were rarely seen during fall and winter surveys, acoustic data indicate that this species may be present within the MA WEA year-round, with the highest rates of acoustic detections in winter and spring (Kraus *et al.* 2016).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. The event has been declared a UME. Partial or full necropsy examinations have been conducted on approximately half of the 111 known cases. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all of the whales examined so more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More detailed information is available at*: https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast* (accessed January 9, 2020). Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. A BIA for humpback whales for feeding has been designated northeast of the lease areas from March through December (LaBrecque *et al.* 2015).

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2017). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year, though densities vary seasonally (Waring *et al.,* 2017). While fin whales typically feed in the Gulf of Maine and the waters surrounding New England, their mating and calving (and general wintering) areas are largely unknown (Hain *et al.* 1992, Hayes *et al.* 2018). Acoustic detections of fin whale singers augment and confirm these visual sighting conclusions for males. Recordings from Massachusetts Bay, New York bight, and deep-ocean areas have detected some level of fin whale singing from September through June (Watkins *et al.* 1987, Clark and Gagnon 2002, Morano *et al.* 2012). These acoustic observations from both coastal and deep-ocean regions support the conclusion that male fin whales are broadly distributed throughout the western North Atlantic for most of the year (Hayes *et al.* 2019).

Kraus *et al.* (2016) suggest that, compared to other baleen whale species, fin whales have a high multi-seasonal relative abundance in the Rhode Island/Massachusetts and Massachusetts Wind Energy Areas (RI/MA & MA WEAs) and surrounding areas. Fin whales were observed in the Massachusetts Wind Energy Area (MA WEA) in spring and summer. This species was observed primarily in the offshore (southern) regions of the RI/MA & MA WEAs during spring and was found closer to shore (northern areas) during the summer months (Kraus *et al.* 2016). Calves were observed three times and feeding was observed nine times during the Kraus *et al.* (2016) study. Although fin whales were largely absent from visual surveys in the RI/MA & MA WEAs in the fall and winter months (Kraus *et al.* 2016), acoustic data indicated that this species was present in the RI/MA & MA WEAs during all months of the year.

The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2017). New England waters represent a major feeding ground for fin whales. The proposed Project Area would overlap spatially and temporally with a feeding BIA for fin whales. The lease areas are flanked by two Biologically Important Areas (BIAs) for feeding fin whales–the area to the northeast is considered a BIA year-round, while the area off the tip of Long Island to the southwest is a BIA from March to October (LaBrecque *et al.* 2015).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern United States and northeastward to south of Newfoundland. NOAA Fisheries considers sei whales occurring from the U.S. East Coast to Cape Breton, Nova Scotia, and east to 42° W as the Nova Scotia stock of sei whales (Waring *et al.* 2016; Hayes *et al.* 2018). In the Northwest Atlantic, it is speculated that the whales migrate from south of Cape Cod along the eastern Canadian coast in June and July, and return on a southward migration again in September and October (Waring *et al.* 2014; 2017). Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). A BIA for feeding for sei whales occurs east of the lease areas from May through November (LaBrecque *et al.* 2015).

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45 °W) to the Gulf of Mexico (Waring *et al.,* 2017). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in which spring to fall are times of relatively widespread and common occurrence, and when the whales are most abundant in New England waters, while during winter the species appears to be largely absent (Waring *et al.,* 2017).

Kraus *et al.* (2016) observed minke whales in the RI/MA & MA WEAs and surrounding areas primarily from May to June. This species demonstrated a distinct seasonal habitat usage pattern that was consistent throughout the study. Though minke whales were observed in spring and summer months in the MA WEA, they were only observed in the lease areas in the spring. Minke whales were not observed between October and February, but acoustic data indicate the presence of this species in the offshore proposed Project Area in winter months.

Since January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. Partial or full necropsy examinations have been conducted on more than 60 percent of the 79 known cases. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease. These findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast* (accessed January 9, 2020).

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.* 2015). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. Sperm whales are somewhat migratory; however, their migrations are not as specific as seen in most of the baleen whale species. In the North Atlantic, there appears to be a general shift northward during the summer, but there is no clear migration in some temperate areas (Rice 1989). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras. Their distribution is typically associated with waters over the continental shelf break and the continental slope and into deeper waters (Whitehead *et al.* 1991). Sperm whale concentrations near drop-offs and areas with strong currents and steep topography are correlated with high productivity. These whales occur almost exclusively found at the shelf break, regardless of season.

Kraus *et al.* (2016) observed sperm whales four times in the RI/MA & MA WEAs during the summer and fall from 2011 to 2015. Sperm whales, traveling singly or in groups of three or four, were observed three times in August and September of 2012, and once in June of 2015. One

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). They are generally found along the edge of the continental shelf (a depth of 330 to 3,300 feet (100 to 1,000 meters)), choosing areas of high relief or submerged banks in cold or temperate shoreline waters. In the western North Atlantic, long-finned pilot whales are pelagic, occurring in especially high densities in winter and spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.* 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and Gulf of Maine areas during the late spring and remain through early fall (May and October) (Payne and Heinemann 1993).

Note that long-finned and short-finned pilot whales overlap spatially along the mid-Atlantic shelf break between New Jersey and the southern flank of Georges Bank (Payne and Heinemann 1993, Hayes *et al.* 2017) Long-finned pilot whales have occasionally been observed stranded as far south as South Carolina, and short-finned pilot whale have stranded as far north as Massachusetts (Hayes *et al.* 2017). The latitudinal ranges of the two species therefore remain uncertain. However, south of Cape Hatteras, most pilot whale sightings are expected to be short-finned pilot whales, while north of approximately 42° N, most pilot whale sightings are expected to be long-finned pilot whales (Hayes *et al.* 2017). Based on the distributions described in Hayes *et al.* (2017), pilot whale sightings in OCS–A 0501 and OCS–A 0522 would most likely be long-finned pilot whales.

Kraus *et al.* (2016) observed pilot whales infrequently in the RI/MA & MA WEAs and surrounding areas. Effort-weighted average sighting rates for pilot whales could not be calculated. No pilot whales were observed during the fall or winter, and these species were only observed 11 times in the spring and three times in the summer.

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2017). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities.

Kraus *et al.* (2016) suggest that Atlantic white-sided dolphins occur infrequently in the RI/MA & MA WEAs and surrounding areas. Effort-weighted average sighting rates for Atlantic white-sided dolphins could not be calculated, because this species was only observed on eight occasions throughout the duration of the study (October 2011 to June 2015). No Atlantic white-sided dolphins were observed during the winter months, and this species was only sighted twice in the fall and three times in the spring and summer

Common Dolphin

The short-beaked common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, short-beaked common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). This species is found between Cape Hatteras and Georges Bank from mid-January to May, although they migrate onto the northeast edge of Georges Bank in the fall where large aggregations occur (Kenney and Vigness-Raposa 2009), where large aggregations occur on Georges Bank in fall (Waring *et al.* 2007). Kraus *et al.* (2016) suggested that short-beaked common dolphins occur year-round in the RI/MA & MA WEAs and surrounding areas. Short-beaked common dolphins were the most frequently observed small cetacean species within the Kraus *et al.* (2016) study area. Short-beaked common dolphins were observed in the RI/MA & MA WEAs in all seasons and observed in the Lease Area OCS–A 0501 in spring, summer, and fall. Only the western North Atlantic stock may be present in the Project Area.

Bottlenose Dolphin

There are two distinct bottlenose dolphin ecotypes in the western North Atlantic: the coastal and offshore forms (Waring *et al.,* 2015). The migratory coastal morphotype resides in waters typically less than 65.6 ft (20 m) deep, along the inner continental shelf (within 7.5 km (4.6 miles) of shore), around islands, and is continuously distributed south of Long Island, New York into the Gulf of Mexico. This migratory coastal population is subdivided into 7 stocks based largely upon spatial distribution (Waring *et al.* 2015). Of these 7 coastal stocks, the Western North Atlantic migratory coastal stock is common in the coastal continental shelf waters off the coast of New Jersey (Waring *et al.* 2017). Generally, the offshore migratory morphotype is found exclusively seaward of 34 km (21 miles) and in waters deeper than 34 m (111.5 feet). This morphotype is most expected in waters north of Long Island, New York (Waring *et al.* 2017; Hayes *et al.* 2017; 2018). During HRG surveys, the Northern Migratory Coastal stock may be encountered while surveying potential OECC routes in the nearshore. Bottlenose dolphins encountered in the HRG Project Area would likely belong to the Western North Atlantic Offshore stock (Hayes *et al.* 2018). It is possible that a few animals could be from the Northern Migratory Coastal stock, but they generally do not range farther north than New Jersey.

Kraus *et al.* (2016) observed common bottlenose dolphins during all seasons within the RI/MA & MA WEAs. Common bottlenose dolphins were the second most commonly observed small cetacean species and exhibited little seasonal variability in abundance. They were observed in the MA WEA in all seasons and observed in Lease Area OCS–A 0501 in the fall and winter

Risso's Dolphins

Risso's dolphins are distributed worldwide in tropical and temperate seas (Jefferson *et al.* 2008, 2014), and in the Northwest Atlantic occur from Florida to eastern Newfoundland (Leatherwood *et al.* 1976; Baird and Stacey 1991). Off the northeastern U.S. coast, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank during spring, summer, and autumn (CETAP 1982; Payne *et al.* 1984). In winter, the range is in the mid-Atlantic Bight and extends outward into oceanic waters (Payne *et al.* 1984). Kraus *et al.* (2016) results suggest that Risso's dolphins occur infrequently in the RI/MA & MA WEAs and surrounding areas.

Harbor Porpoise

In the Project Area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2017). During fall (October–December) and spring (April–June) harbor porpoises are widely dispersed from New Jersey to Maine. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada. They are seen from the coastline to deep waters (≤1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2017).

Kraus *et al.* (2016) indicate that harbor porpoises occur within the RI/MA & MA WEAs in fall, winter, and spring. Harbor porpoises were observed in groups ranging in size from three to 15 individuals and were primarily observed in the Kraus *et al.* (2016) study area from November through May, with very few sightings during June through September

Harbor Seal

Harbor seals are year-round inhabitants of the coastal waters of eastern Canada and Maine (Katona *et al.* 1993), and occur seasonally along the coasts from southern New England to New Jersey from September through late May. While harbor seals occur year-round north of Cape Cod, they only occur during winter migration, typically September through May, south of Cape Cod (Southern New England to New Jersey) (Waring *et al.* 2015; Kenney and Vigness-Raposa 2009). *Gray Seal*

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the Project Area belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2017). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2017). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2017). Gray seals are expected to occur year-round in at least some potential OECC routes, with seasonal occurrence in the offshore areas from September to May (Hayes *et al.* 2018).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, seals showing clinical signs of stranding have occurred as far south as Virginia, although not in elevated numbers. Therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Between July 1, 2018 and January 9, 2020, a total of 3,050 seal strandings have been recorded as part of this designated Northeast Pinniped UME. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus. Additional testing to identify other factors that may be involved in this UME are underway.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

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

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

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

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fourteen mammal species (12 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), five are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* 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* 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

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

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

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels

lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

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

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed. 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. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Potential Effects of Underwater Sound

For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range.

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.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that HRG surveys may result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall

et al., 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

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

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

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

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

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Animals in the Project Area during the proposed survey are unlikely to incur TTS due to the characteristics of the sound sources, which include relatively low source levels and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the majority of the geophysical survey equipment proposed for use makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

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 airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

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

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

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

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

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

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement,

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

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

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

We expect that some marine mammals may exhibit behavioral responses to the HRG survey activities in the form of avoidance of the area during the activity, especially the naturally shy harbor porpoise, while others such as delphinids might be attracted to the survey activities out of curiosity. However, because the HRG survey equipment operates from a moving vessel, and the maximum radius to the Level B harassment threshold is relatively small, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated impacts within the Project Area.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Vineyard Wind's use of HRG survey equipment. Previous commenters have referenced a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring is likely very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

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).

NMFS does not expect that the generally short-term, intermittent, and transitory HRG activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

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

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

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

Marine mammal communications would not likely be masked appreciably by the HRG equipment given the directionality of the signals (for most geophysical survey equipment types proposed for use (Table 1) and the brief period when an individual mammal is likely to be within its beam.

Vessel Strike

Vessel strikes of marine mammals can cause significant wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.,* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kn). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical surveys. Marine mammals would be able to easily avoid the survey vessel due to the slow vessel speed. Further, Vineyard Winds would implement measures (*e.g.,* protected species monitoring, vessel speed restrictions and separation distances; see *Proposed Mitigation*) set forth in the BOEM lease to reduce the risk of a vessel strike to marine mammal species in the Project Area.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential minor and short-term impacts to food sources such as forage fish. The proposed activities could affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed project area with the exception of feeding BIAs for right, humpback, fin, and sei whales and a migratory BIA for right whales which were described previously. There is also designated critical habitat for right whales. The HRG survey equipment will not contact the substrate and does not represent a source of pollution. Impacts to substrate or from pollution are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. The duration of fish avoidance of an area after HRG surveys depart the area is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of the proposed HRG survey, the fact that the proposed survey is mobile rather than stationary, and the relatively small areas potentially affected. The areas likely impacted by the proposed activities are relatively small compared to the available habitat in the Atlantic Ocean. 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. Based on the information discussed herein, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations. Effects to habitat will not be discussed further in this document.

Estimated Take

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

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

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), 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.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds

above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

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

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Vineyard Wind's proposed activity includes the use of impulsive sources (geophysical survey equipment), and therefore use of the 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria (cumulative sound exposure level (SELcum) and peak sound pressure level metrics) to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Vineyard Wind's proposed activity includes the use of impulsive sources.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups were calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both using both SEL_{cum} and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed survey would entail the use of HRG equipment. The distance to the isopleths corresponding to both Level A and Level B harassment was calculated for all HRG equipment with the potential to result in harassment of marine mammals. In their application, Vineyard Wind employed a new model for determining the horizontal distance to Level A harassment isopleths (See Appendix A). This new model was developed by the applicant since the optional User Spreadsheet devised by NMFS to calculate PTS isopleths is not

specifically designed for HRG surveys and does not take into account seawater absorption or fully consider beam patterns, both of which can influence received sound levels. To account for seawater absorption the model calculated an appropriate absorption coefficient using the lowest frequency employed by a specific device. To account for beam pattern, an out-of-beam source correction factor was derived and used to establish the out-of-beam source level as shown in Table 5. Separate impact ranges were calculated using the in-beam source level at the angle corresponding to the −3 dB half-width and the out-of-beam source level in the horizontal direction. The higher of the two sound levels was then selected for assessing impact distance. Dual metric acoustic thresholds using both cumulative sound exposure level (SELcum) and peak sound pressure level metrics were calculated. For all equipment categories, use of the SELcum resulted in larger Level A harassment isopleths.

As part of this model, sources that operate with a repetition rate greater than 10 Hz were assessed with the non-impulsive source criteria while sources with a repetition rate equal to or less than 10 Hz were assessed with the impulsive source criteria. Under this system all HRG sources would be classified as impulsive. NMFS does not agree with the classification of all HRG sources as impulsive. The use of the 10 Hz repetition rate would be precedent-setting and NMFS believes that this issue requires further evaluation. However, NMFS opted to include the modeled Level A distances in the proposed IHA, since classification of all HRG sources as impulsive results in more conservative Level A harassment isopleths.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the proposed surveys and the sound levels associated with those HRG equipment types. Table A–3 in Appendix A of the IHA application shows the literature sources for the sound source levels that were incorporated into the model.

TABLE 5—DERIVED OUT-OF-BEAM SOURCE LEVELS

Description		In-beam		Correction (dB)	Out-of-beam	
Equipment type	System	Source level (dB re 1 μPa m)	Peak source level (dB re 1 μPa m)		Source level (dB re 1 μPa m)	Peak source level (dB re 1 μPa m)
Shallow subbottom profilers	EdgeTech Chirp 216	178	182	−8.1	169.9	173.9
Shallow subbottom profilers	Innomar SES 2000 Medium	241	247	−36.3	204.7	210.7
Deep seismic profilers	Applied Acoustics AA251 Boomer	205	212	0.0	205	212
Deep seismic profilers	GeoMarine Geo Spark 2000 (400 tip)	206	214	0.0	206	214
Underwater positioning (USBL)	SonarDyne Scout Pro	188	191	0.0	188	191
Underwater positioning (USBL)	ixBlue Gaps	191	194	0.0	191	194

NMFS has developed an interim methodology for determining the rms sound pressure level (SPLrms) at the 160–dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment (NOAA 19 Sep 2019). Vineyard Wind used this methodology with additional modifications that provide a more accurate seawater absorption formula and account for energy emitted outside of the primary beam of the source. This approach is described in detail in Appendix B.

Note that Vineyard Wind initially proposed to use a blanket 100-ms integration time to adjust the source level for all HRG sound sources and all species to estimate Level B harassment distances. However, it is known that integration time varies and depends on a multitude of factors, including frequency, repetition rate, bandwidth, and species. NMFS agrees that integration time is an important factor for consideration, but using a single number to encompass all sound sources and species seems like a potential oversimplification. Therefore, NMFS used pulse duration only to estimate Level B harassment isopleths. Calculated results using both pulse duration and a 100-ms integration time are shown in Appendix B for comparative purposes.

Results of modeling described above indicated that sound produced by the GeoMarine Geo Spark 2000 would propagate furthest to the Level B harassment threshold; therefore, for the purposes of the exposure analysis, it was assumed the GeoMarine Geo Spark 2000 would be active during the entirety of the survey. The distance to the isopleth corresponding to the threshold for Level B harassment for the GeoMarine Geo Spark 2000 (estimated at 195 m; Table 6) was used as the basis of the take calculation for all marine mammals. Note that this likely provides a conservative estimate of the total ensonified area resulting from the proposed activities. Vineyard Wind may not operate the GeoMarine Geo Spark 2000 during the entirety of the proposed survey, and for any survey segments in which it is not used the distance to the Level B harassment threshold would be less than 195 m and the corresponding ensonified area would also decrease. The model also assumed that the sparker (GeoMarine Geo Spark 2000) is omnidirectional. This assumption, which is made because the beam pattern is unknown, results in precautionary estimates of received levels generally, and in particular is likely to overestimate both SPL and PK. This overestimation of the SPL likely results in an overestimation of the number of takes by Level B harassment for this type of equipment.

TABLE 6—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS [1]

HRG survey equipment		Level A harassment horizontal impact distance (m)				Level B harassment horizontal impact distance (m)
		Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Phocid pinnipeds	All
Shallow subbottom profilers	EdgeTech Chirp 216	<1	<1	<1	<1	4
Shallow subbottom profilers	Innomar SES 2000 Medium	<1	<1	60	<1	116
Deep seismic profilers	Applied Acoustics AA251 Boomer	<1	<1	60	<1	178
Deep seismic profilers	GeoMarine Geo Spark 2000 (400 tip)	<1	<1	6	<1	195
Underwater positioning (USBL)	SonarDyne Scout Pro	*	*	*	*	24
Underwater positioning (USBL)	ixBlue Gaps	<1 m	<1 m	55	<1 m	35

[1] Note that SELcum was greater than peak SPL in all instances.

Due to the small estimated distances to Level A harassment thresholds for all marine mammal functional hearing groups (less than 1 m for all hearing groups including all equipment types and no more than 60 m for high frequency cetaceans including all equipment types), and in consideration of the proposed mitigation measures (see the *Proposed Mitigation* section for more detail), NMFS has determined that the likelihood of take of marine mammals in the form of Level A harassment occurring as a result of the proposed survey is so low as to be discountable, and we therefore do not propose to authorize the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the proposed Project Area. The density data presented by Roberts *et al.* (2016, 2017, 2018) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Although these updated models (and a newly developed seal density model) are not currently publicly available, our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. More information, including the model results and supplementary information for each model, is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/*. Marine mammal density estimates in the project area (animals/km ^{2}) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018). The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016).

For purposes of the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018) were mapped using a geographic information system (GIS). The density coverages that included any portion of the proposed project area were selected for all survey months. Monthly density data for each species were then averaged over the year to come up with a mean annual density value for each species. The mean annual density values used to estimate take numbers are shown in Table 7 below.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel. Vineyard Wind estimates that proposed survey vessels will achieve a maximum daily track line distance of 100 km per day during proposed HRG surveys. This distance accounts for the vessel traveling at roughly 4 knots and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 195 m (Table 6) and the maximum estimated daily track line distance of 100 km, an area of 39.12 km^2 would be ensonified to the Level B harassment threshold per day during Vineyard Wind's proposed HRG surveys. As described above, this is a conservative estimate as it assumes the HRG sources that result in the greatest isopleth distances to the Level B harassment threshold would be operated at all times during the all 736 vessel days.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km^2) by incorporating the estimated marine mammal densities as described above. Estimated numbers of each species taken per day are then multiplied by the total number of vessel days (*i.e.,* 736). The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \#\text{ of days}$$

Where:

D = average species density (per km^2) and ZOI = maximum daily ensonified area to relevant thresholds.

Using this method to calculate take, Vineyard wind estimated that there would be takes of several species by Level A harassment including Atlantic White-sided dolphin, bottlenose

dolphin, short-beaked common dolphin, harbor porpoise, gray seal, and harbor seal in the absence of mitigation (see Table 10 in the IHA application for the estimated number of Level A takes for all potential HRG equipment types). However, as described above, due to the very small estimated distances to Level A harassment thresholds (Table 6), and in consideration of the proposed mitigation measures, the likelihood of the proposed survey resulting in take in the form of Level A harassment is considered so low as to be discountable; therefore, we do not propose to authorize take of any marine mammals by Level A harassment. Proposed take numbers by Level B harassment are shown in Table 7.

TABLE 7—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Annual density mean (km^{-2})	Estimated Level B harassment takes	Proposed takes by Level B harassment	Percent population [1]
Fin whale	0.0023	67.28	67	0.91
Humpback whale	0.0016	45.73	46	3.28
Minke whale	0.001	41.20	41	0.17
North Atlantic right whale	0.001	30.32	10	7.41
Sei whale	0.000	3.23	3.23	0.05
Atlantic white sided dolphin	0.0351	1,011.19	1,011	1.10
Bottlenose dolphin	0.0283	814.91	815	1.30
Pilot whales [2]	0.0049	1,41.98	142	2.52
Risso's dolphin [3]	0.000	5.74	30	<0.08
Common dolphin	0.071	2,035.87	2,036	1.18
Sperm whale	0.000	3.82	4	0.09
Harbor porpoise	0.0363	1,044.87	1,045	1.09
Gray seal	0.1404	4,043.67	4,044	14.90
Harbor seal	0.1404	4,043.67	4,044	5.33

[1] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the 2018 North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.,* 2020).
[2] Long- and short-finned pilot whales are grouped together as a guild.
[3] Mean group sizes for species derived from Kenney and Vigness-Raposa (2010).
[4] Exclusion zone exceeds Level B isopleth; take adjusted to 10 given duration of survey.

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.

Proposed Mitigation Measures

NMFS proposes the following mitigation measures be implemented during Vineyard Wind's proposed marine site characterization surveys.

Marine Mammal Exclusion Zones, Buffer Zone and Monitoring Zone

Marine mammal exclusion zones (EZ) would be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- A 500-m EZ would be required for North Atlantic right whales
- A 100-m EZ would be required for all other marine mammals (with the exception of certain small dolphin species specified below)

If a marine mammal is detected approaching or entering the EZs during the proposed survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200-m Buffer Zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the Buffer Zone (but outside the EZs) would be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone. In addition, any marine mammals observed within 195 m of the active HRG equipment operating at or

below 180 kHz would be documented by PSOs as taken by Level B harassment. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

NMFS only requires a single PSO to be on duty during daylight hours and 30 minutes prior to and during nighttime ramp-ups for HRG surveys. Vineyard Wind has voluntarily proposed that a minimum of two (2) NMFS-approved PSOs must be on duty and conducting visual observations on all survey vessels at all times when HRG equipment is in use (*i.e.* daylight and nighttime operations). PSOs must be on duty 30 minutes prior to and during nighttime ramp-ups of HRG equipment. Visual monitoring would begin no less than 30 minutes prior to ramp-up of HRG equipment and would continue until 30 minutes after use of the acoustic source. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs would estimate distances to marine mammals located in proximity to the vessel and/or relevant using range finders. It would be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data would be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Vineyard Wind would implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone would also act as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs would ensure that no marine mammals are observed within 200 m of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment would not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator would notify a designated PSO of the proposed start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO conducting pre-clearance observations would be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Project Area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

Shutdown Procedures

If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. When shutdown is called for by a PSO, the acoustic source would be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty would have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for large whales).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable) or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, and Tursiops)* under certain circumstances. If a delphinid(s) from these genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed survey equipment, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs would use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for

which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (195 m), shutdown would occur.

Vessel Strike Avoidance

Vessel strike avoidance measures would include, but would not be limited to, the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators and crew will maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes: Any DMAs when in effect, and the Block Island Seasonal Management Area (SMA) (from November 1 through April 30), Cape Cod Bay SMA (from January 1 through May 15), Off Race Point SMA (from March 1 through April 30) and Great South Channel SMA (from April 1 through July 31). Note that this requirement includes vessels, regardless of size, to adhere to a 10 knot speed limit in SMAs and DMAs, not just vessels 65 ft or greater in length.
- All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;
- All vessels will maintain a separation distance of 500 m (1640 ft) or greater from any sighted North Atlantic right whale;
- If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500-m (1640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m;
- All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean. Any vessel underway remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and
- All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Project-specific training will be conducted for all vessel crew prior to the start of survey activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey activities.

Seasonal Operating Requirements

Vineyard Wind will conduct HRG survey activities in the Cape Cod Bay SMA and Off Race Point SMA only during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of the NARW north and northeast of Cape Cod (fall, winter, and spring). Vineyard Wind will also limit to three the number survey vessels that will operate concurrently from March through June within the lease areas (OCS–A 0501 and 0487) and OECC areas north of the lease areas up to, but not including, coastal and bay waters. The boundaries of this area are delineated by a polygon with the following vertices: 40.746 N 70.748 W; 40.953 N 71.284 W; 41.188 N 71.284 W; ~41.348 N 70.835 W; 41.35 N 70.455 W; 41.097 N 70.372 W; and 41.021 N 70.37 W. This area is delineated by the dashed line shown in Figure 2. Another seasonal restriction area south of Nantucket will be in effect from December to February in the area delineated by the current DMA (Effective from January 31, 2020 through February 15, 2020). The winter seasonal restriction area is delineated by latitudes and longitudes of 41.1838 N; 40.3666 N; 69.5333 W; and 70.6166 W. This area is delineated by the solid line in Figure 2.

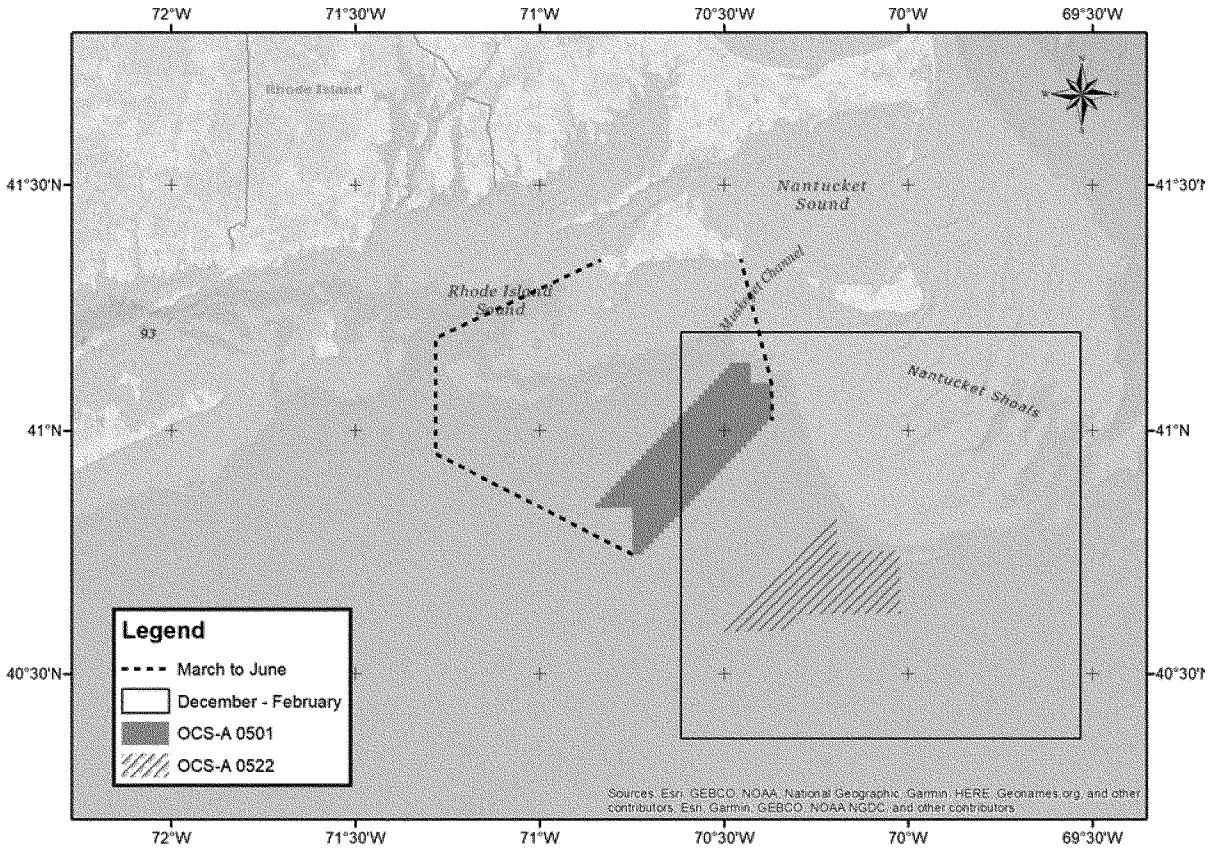

Figure 2. Seasonally Restricted Areas

Vineyard Wind would operate either a single vessel, two vessels concurrently or, for short periods, no more than three survey vessels concurrently in the areas described above during the December–February and March–June timeframes when right whale densities are greatest. The seasonal restrictions described above will help to reduce both the number and intensity of right whale takes.

Vineyard Wind would also employ passive acoustic monitoring (PAM) to support monitoring during night time operations to provide for acquisition of species detections at night. While PAM is not typically required by NMFS for HRG surveys, it may a provide additional benefit as a mitigation and monitoring measure to further limit potential exposure to underwater sound at levels that could result in injury or behavioral harassment.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

As described above, visual monitoring would be performed by qualified and NMFS-approved PSOs. Vineyard Wind would use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Vineyard Wind would provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of two PSOs must be on duty and conducting visual observations at all times on all active survey vessels when HRG equipment is operating, including both daytime and nighttime operations. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until one hour after use of the acoustic source ceases. PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all survey vessels.

PSOs would be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. Position data would be recorded using hand-held or vessel GPS units for each sighting. Observations would take place from the highest available vantage point on the survey vessel. General 360-degree scanning would occur during the monitoring periods, and target scanning by the PSO would occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In the event that Vineyard Wind personnel discover an injured or dead marine mammal, Vineyard Wind shall report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, the IHA-holder shall report the incident to OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken''

through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. As discussed in the ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'' section, PTS, masking, non-auditory physical effects, and vessel strike are not expected to occur.

The majority of impacts to marine mammals are expected to be short-term disruption of behavioral patterns, primarily in the form of avoidance or potential interruption of foraging. Marine mammal feeding behavior is not likely to be significantly impacted.

Regarding impacts to marine mammal habitat, prey species are mobile, and are broadly distributed throughout the Project Area and the footprint of the activity is small; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the availability of similar habitat and resources in the surrounding area the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. The HRG survey equipment itself will not result in physical habitat disturbance. Avoidance of the area around the HRG survey activities by marine mammal prey species is possible. However, any avoidance by prey species would be expected to be short term and temporary.

ESA-listed species for which takes are authorized are right, fin, sei, and sperm whales, and these effects are anticipated to be limited to lower level behavioral effects. NMFS does not anticipate that serious injury or mortality would occur to ESA-listed species, even in the absence of mitigation and no serious injury or mortality is authorized. As discussed in the *Potential Effects* section, non-auditory physical effects and vessel strike are not expected to occur. We expect that most potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). The proposed survey is not anticipated to affect the fitness or reproductive success of individual animals. Since impacts to individual survivorship and fecundity are unlikely, the proposed survey is not expected to result in population-level effects for any ESA-listed species or alter current population trends of any ESA-listed species.

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. NMFS has rigorously assessed potential impacts to right whales from this survey. We have established a 500-m shutdown zone for right whales which is precautionary considering the Level B harassment isopleth for the largest source utilized (*i.e.* GeoMarine Geo Spark 2000 (400 tip) is estimated to be 195 m.

NMFS is also requiring Vineyard Wind to limit the number of survey vessels operating concurrently to no more than three in specified areas during periods when right whale densities are likely to be elevated. This includes a specified area approximately 31 miles due south of Nantucket including Lease Area OCS–A 0522 from December to February as well as Lease Area OCS–A 0501 and surrounding Project Areas south and southwest of Martha's Vineyard from March to June. Numerous right whale aggregations have been reported in these areas during the winter and spring. Furthermore, surveys in right whale critical habitat area will be limited to August and September when the whales are unlikely to be present. Due to the length of the survey and continuous night operations, it is conceivable that a limited number of right whales could enter into the Level B harassment zone without being observed. Any potential impacts to right whales would consist of, at most, low-level, short-term behavioral harassment in a limited number of animals.

The proposed Project Area encompasses or is in close proximity to feeding BIAs for right whales (February–April), humpback whales (March–December), fin whales (March–October), and sei whales (May–November) as well as a migratory BIA or right whales (March–April and November–December. Most of these feeding BIAs are extensive and sufficiently large (705 km^2 and 3,149 km^2 for right whales; 47,701 km^2 for humpback whales; 2,933 km^2 for fin whales; and 56,609 km^2 for sei whales), and the acoustic footprint of the proposed survey is sufficiently small that feeding opportunities for these whales would not be reduced appreciably. Any whales temporarily displaced from the proposed Project Area would be expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitat. In addition, any displacement of whales from the BIA or interruption of foraging bouts would be expected to be temporary in nature. Therefore, we do not expect whales with feeding BIAs to be negatively impacted by the proposed survey.

A migratory BIA for North Atlantic right whales (effective March–April and November–December) extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the south coast of Massachusetts and Rhode Island, this BIA extends from the coast to beyond the shelf break. The fact that the spatial acoustic footprint of the proposed survey is very small relative to the spatial extent of the available migratory habitat means that right whale migration is not expected to be impacted by the proposed survey. Required vessel strike avoidance measures will also decrease risk of ship strike during migration. NMFS is expanding the standard avoidance measures by requiring that all vessels, regardless of size, adhere to a 10 knot speed limit in SMAs and DMA. Additionally, limited take by Level B harassment of North Atlantic right whales has been authorized as HRG survey operations are required to shut down at 500 m to minimize the potential for behavioral harassment of this species.

As noted previously, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of

humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains healthy. Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Elevated North Atlantic right whale mortalities began in June 2017, primarily in Canada. Overall, preliminary findings support human interactions, specifically vessel strikes or rope entanglements, as the cause of death for the majority of the right whales. Elevated numbers of harbor seal and gray seal mortalities were first observed in July, 2018 and have occurred across Maine, New Hampshire and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance in the United States is over 27,000, with an estimated abundance including seals in Canada of approximately 505,000, and abundance is likely increasing in the U.S. Atlantic EEZ as well as in Canada (Hayes *et al.,* 2018).

Direct physical interactions (ship strikes and entanglements) appear to be responsible for many of the UME humpback and right whale mortalities recorded. The proposed HRG survey will require ship strike avoidance measures which would minimize the risk of ship strikes while fishing gear and in-water lines will not be employed as part of the survey. Furthermore, the proposed activities are not expected to promote the transmission of infectious disease among marine mammals. The survey is not expected to result in the deaths of any marine mammals or combine with the effects of the ongoing UMEs to result in any additional impacts not analyzed here. Accordingly, Vineyard Wind did not request, and NMFS is not proposing to authorize, take of marine mammals by serious injury, or mortality.

The required mitigation measures are expected to reduce the number and/or severity of takes by giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and preventing animals from being exposed to sound levels that have the potential to cause injury (Level A harassment) and more severe Level B harassment during HRG survey activities, even in the biologically important areas described above. No Level A harassment is anticipated or authorized.

NMFS expects that most takes would primarily be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity and with no lasting biological consequences. Since both the source and the marine mammals are mobile, only a smaller area would be ensonified by sound levels that could result in take for only a short period. Additionally, required mitigation measures would reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our 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 or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated;
- Any foraging interruptions are expected to be short term and unlikely to be cause significantly impacts;
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the Project Area;
- Survey activities would occur in such a comparatively small portion of the biologically important areas for north Atlantic right whale migration, including a small area of designated critical habitat, that any avoidance of the Project Area due to activities would not affect migration. In addition, mitigation measures to shut down at 500 m to minimize potential for Level B behavioral harassment would limit both the number and severity of take of the species.
- Similarly, due to the relatively small footprint of the survey activities in relation to the size of a biologically important areas for right, humpback, fin, and sei whales foraging, the survey activities would not affect foraging behavior of this species; and
- Proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize the intensity of potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Vineyard Wind's proposed HRG survey activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (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.

The numbers of marine mammals that we propose for authorization to be taken, for all species and stocks, would be considered small relative to the relevant stocks or populations (less than 15 percent for all species and stocks) as shown in Table 7. 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 determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei, and sperm whale. The Permits and Conservation Division has requested initiation of Section 7 consultation with NMFS GARFO for the issuance of this IHA. NMFS will conclude the ESA section 7 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 Vineyard Wind for conducting marine site characterization surveys offshore of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, and New York, from April 1, 2020 through March 31, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed HRG survey. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 5, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02662 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XW018]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of opportunities to submit public comments.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2020 ocean salmon fisheries off the U.S. West Coast. This notice informs the public of opportunities to provide comments on the development of 2020 ocean salmon management measures.

DATES: Written comments on the salmon management alternatives adopted by the Pacific Council at its March 2020 meeting, as described in its Preseason Report II, received electronically or in hard copy by 5 p.m. Pacific Time, March 27, 2020, will be considered in the Pacific Council's final recommendation for the 2020 management measures.

ADDRESSES: Documents will be available from the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, and will be posted on the Pacific Council website at *http://www.pcouncil.org.* You may submit comments by any one of the following methods:

- Written comments should be sent electronically to Mr. Phil Anderson, Chair, Pacific Fishery Management Council, via the Pacific Council's e-Portal by visiting *https://pfmc.psmfc.org.*
- Comments can also be submitted to NMFS via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0139,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. All comments received via the Federal e-Rulemaking Portal are a part of the public record and will generally be posted for public viewing on *http://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 and the

Pacific Council will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

• *Mail:* Mr. Phil Anderson, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384. Comments submitted by mail will be entered into the Pacific Council's e-Portal by Pacific Council Staff.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council, telephone: 503–820–2280. For information on submitting comments via the Federal e-Rulemaking portal, contact Peggy Mundy, NMFS West Coast Region, telephone: 206–526–4323; email: *peggy.mundy@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Pacific Council has announced the schedule of reports, public meetings, and hearings for the 2020 ocean salmon fisheries on its website (*http://www.pcouncil.org*) and in the **Federal Register** (84 FR 70954, December 26, 2019). The Pacific Council will adopt alternatives for 2020 ocean salmon fisheries at its March 3–9. 2020, meeting at the DoubleTree by Hilton Sonoma, Rohnert Park, CA. Details of this meeting are available on the Pacific Council's website (*http://www.pcouncil.org*). On March 20, 2020, ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2020 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.* The report will include a description of the salmon management alternatives and a summary of their biological and economic impacts. Public hearings will be held to receive comments on the proposed ocean salmon fishery management alternatives adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

• *March 23, 2020:* Chateau Westport, Beach Room, 710 West Hancock, Westport, WA 98595, telephone 360–268–9101.

• *March 23, 2020:* Red Lion Hotel, South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

• *March 24, 2020:* Red Lion Hotel, Redwood Ballroom, 1929 4th Street, Eureka, CA 95501, telephone 707–445–0844.

Comments on the alternatives the Pacific Council adopts at its March 2020 meeting, and described in its Preseason Report II, may be submitted in writing or electronically as described under **ADDRESSES**, or verbally or in writing at any of the public hearings held on March 23–24, 2020, or at the Pacific Council's meeting, April 3–10, 2020, at the Hilton Vancouver, in Vancouver, WA. Details of these meetings will be available on the Pacific Council's website (*http://www.pcouncil.org*) and will be published in the **Federal Register**. Written and electronically submitted comments must be received no later than 5 p.m. Pacific Time, March 27, 2020, in order to be included in the briefing book for the Pacific Council's April meeting where they will be considered in the adoption of the Pacific Council's final recommendation for the 2020 salmon fishery management measures. All comments received accordingly will be reviewed and considered by the Pacific Council and NMFS.

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

Dated: February 6, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–02737 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA040]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits, permit amendments, and permit modifications.

SUMMARY: Notice is hereby given that permits or permit amendments or modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore (Permit No. 17305–01), Sara Young (Permit No. 22678), Shasta McClenahan (Permit No. 18638–01), Amy Hapeman (Permit No. 22281), Erin Markin (Permit No. 23200), and Malcolm Mohead (Permit Nos. 22671–01 and 23096); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS

Permit No.	RIN/RTID	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
17305–01	0648–XD52	Alliance of Marine Mammal Parks and Aquariums, 218 N. Lee Street, Suite 200, Alexandria, VA 22314 (Responsible Party: Kathleen Dezio).	80 FR 7419; February 10, 2015.	January 7, 2020.
18638–01	0648–XD52	NMFS' Marine Mammal Laboratory, 7600 Sand Point Way NE, Seattle WA (Responsible Party: John Bengtson).	80 FR 7419; February 10, 2015.	December 31, 2019.
22281	0648–PR–A002	Kristen Hart, Ph.D., U.S. Geological Survey, Wetland and Aquatic Research Center, Davie Field Office, 3321 College Ave., Davie, FL 33314.	84 FR 29503; June 24, 2019.	January 13, 2020.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS—Continued

Permit No.	RIN/RTID	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
22671–01	0648–XR072	U.S. Geological Survey, Conte Anadromous Fish Research Laboratory, 1 Migratory Way, Tuner Falls, MA 01376 (Responsible Party: Adria Elskus).	84 FR 67720; December 11, 2019.	January 31, 2020.
22678	0648–XR063	NMFS' Marine Mammal Laboratory, 7600 Sand Point Way NE, Seattle WA (Responsible Party: John Bengtson).	84 FR 57404; October 25, 2019.	December 20, 2019.
23096	0648–XR072	University of Georgia, Warnell School of Forestry and Natural Resources, 180 E. Green Street, Athens, GA 30602 (Responsible Party: Dale Greene).	84 FR 67720; December 11, 2019.	January 31, 2020.
23200	0648–XR072	University of North Carolina, Wilmington, 601 South College Road, Wilmington, NC 28403 (Responsible Party: Frederick Scharf).	84 FR 67720; December 11, 2019.	January 31, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: February 7, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–02792 Filed 2–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force, Board of Visitors of the U.S. Air Force Academy, DOD.

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 Visitors (BoV) of the U.S. Air Force Academy (USAFA) will take place.

DATES: Open to the public Wednesday February 19, 2020 from 7:45 a.m. to 5:00 p.m. (Mountain Time).

ADDRESSES: United States Air Force Academy, Eisenhower Golf Course, Building 3170, Colorado Springs, CO 80840

FOR FURTHER INFORMATION CONTACT: Captain Jonathan W. Wood, (703) 695–9030, *jonathan.w.wood.mil@mail.mil* or Ms. Jean R. Love, (DFO), (703) 692–7757, (703) 693–4244 (Facsimile), *jean.r.love.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is 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. Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Board of Visitors of the United States Air Force Academy was unable to provide sufficient public notification required by 41 CFR 102–3.150(a) concerning changes to the previously noticed meeting agenda for the Board of Visitors of the United States Air Force Academy on February 19, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The purpose of the meeting is to review morale and discipline, social climate, athletics, diversity, curriculum and other matters relating to the U.S. Air Force Academy. The meeting will address topics that include space force integration across the Academy, updates from the Academy superintendent, commandant, Dean, Athletics department, and the Institute for Future Conflict, Senior Air Force Specialty Code matching and Innovation Showcase.

Meeting Accessibility: For sessions open to the public, subject to the availability of space. Registration of members of the public who wish to attend the open sessions begins upon publication of this meeting notice and ends three business days (February 12) prior to the start of the meeting. All members of the public must contact Capt Jonathan Wood at the phone number or email listed below in the section titled **FOR FURTHER INFORMATION CONTACT**. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the point of contact (POC) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the open session of the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the BoV.

Written Statements: Any member of the public wishing to provide input to the board of Visitors in accordance with to 41 CFR 102–3.105(j) and § 102–3.140 and § 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the BoV about its mission and/or the topics to be addressed in the open sessions of this public meeting. Written comments or statements should be submitted to the

BoV Executive Secretary, Capt Jonathan Wood, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the BoV Executive Secretary at least five (5) business days (February 10) prior to the meeting so they may be made available to the BoV Chairman for consideration prior to the meeting. Written comments or statements received after this date (February 10) may not be provided to the BoV until its next meeting. Please note that because the BoV operates under the provisions of the FACA, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the open session of the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open session of the meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days (February 13) in advance, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The BoV DFO will log each request to make a comment, in the order received, and the DFO and BoV Chairman will determine whether the subject matter of each comment is relevant to the BoV's mission and/or topics to be addressed in this public meeting. A period near the end of the meeting (open session) will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the BoV meeting shall be made available upon request.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–02802 Filed 2–11–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0026]

Agency Information Collection Activities; Comment Request; Vocational Rehabilitation Financial Report (RSA–2)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 13, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0026. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact David Steele, 202–245–6520.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Vocational Rehabilitation Financial Report (RSA–2).

OMB Control Number: 1820–0017.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 312.

Total Estimated Number of Annual Burden Hours: 10,193.

Abstract: The Vocational Rehabilitation Financial Report (RSA–2) collects data on the State Vocational Rehabilitation Services (VR) program activities for agencies funded under the Rehabilitation Act of 1973, as amended (Rehabilitation Act). The RSA–2 captures the Federal and non-Federal administrative expenditures for the VR program; Services to Groups Federal and non-Federal expenditures; American Job Center Infrastructure Federal and non-Federal expenditures; receipt, use and/or transfer of VR program income; financial data necessary to ensure Federal award requirements are met (*e.g.,* match, maintenance of effort, and pre-employment transition services reservation of funds); and obligations and disbursements that occurred during the period of the award.

The basic data comprising the RSA–2 are mandated by the Rehabilitation

Act as specified in Section 101(a)(10)(D). Section 13 of the Rehabilitation Act requires the Commissioner of RSA to collect and report information to the Congress and the President through an Annual Report.

The substantive revisions to the RSA–2 form were necessary to: Add data elements in order to implement amendments to the Rehabilitation Act of 1973 (Rehabilitation Act) made by title IV of the Workforce Innovation and Opportunity Act (WIOA) (*e.g.,* those related to services to groups and pre-employment transition services); add data elements necessitated by the VR program's role as a core program in the one stop service delivery system and the jointly administered requirements of title I of WIOA (*e.g.,* those related to one-stop center infrastructure costs and reporting periods); incorporate VR program-specific financial data elements, previously reported on the SF–425, necessary to ensure VR agencies comply with program requirements (*e.g.,* match and maintenance of effort); and remove data elements that are duplicative of data collected in the RSA–911 Case Service Report. As a result of the revisions to this form, VR agencies will no longer be required to submit SF–425 reports for the VR program beginning with the FFY 2020 grant awards. Difference noted above does not include the reduced burden resulting from VR agencies no longer having to submit these forms.

Dated: February 7, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–02783 Filed 2–11–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–956–000]

Thunderhead Wind Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Thunderhead Wind Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02807 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–27–000.
Applicants: Atlanta Gas Light Company.
Description: Tariff filing per 284.123(b),(e)+(g): Update to Statement of Rates to be effective 1/1/2020.
Filed Date: 1/29/2020.
Accession Number: 202001295030.
Comments Due: 5 p.m. ET 2/19/2020.
284.123(g) Protests Due: 5 p.m. ET 3/30/2020.

Docket Number: PR20–28–000.
Applicants: Midcoast Pipelines (Oklahoma Transmission) L.L.C.
Description: Tariff filing per 284.123(e)+(g)/: Notice of Cancellation of Statement of Operating Conditions to be effective 2/13/2020.
Filed Date: 1/30/2020.
Accession Number: 202001305092.
Comments Due: 5 p.m. ET 2/20/2020.
284.123(g) Protests Due: 5 p.m. ET 3/30/2020.

Docket Number: PR20–29–000.
Applicants: Southern California Gas Company.
Description: Tariff filing per 284.123(b),(e)+(g): Offshore_Delivery_Service_Rate_Revision_January_2020 to be effective 1/1/2020.
Filed Date: 1/30/2020.
Accession Number: 202001305118.
Comments Due: 5 p.m. ET 2/20/2020.
284.123(g) Protests Due: 5 p.m. ET 3/30/2020.

Docket Number: PR20–30–000.
Applicants: Caprock Permian Natural Gas Transmission LLC.
Description: Tariff filing per 284.123(b),(e)+(g): CR Permian Natural Gas transmission LLC Revised SOC (Name Change) to be effective 12/23/2019.
Filed Date: 1/31/2020.
Accession Number: 202001315344.
Comments Due: 5 p.m. ET 2/21/2020.
284.123(g) Protests Due: 5 p.m. ET 3/31/2020.

Docket Number: PR20–2–003.
Applicants: Valley Crossing Pipeline, LLC.
Description: Tariff filing per 284.123(b),(e)+(g): Amended Petition for Rate Approval and Statement of Operating Conditions 2–3–20 to be effective 1/24/2020.
Filed Date: 2/3/2020.
Accession Number: 202002035036.
Comments Due: 5 p.m. ET 2/24/2020.
284.123(g) Protests Due: 5 p.m. ET 2/24/2020.

Docket Number: PR20–5–002.
Applicants: Midcoast Pipelines (North Texas) L.P.
Description: Tariff filing per 284.123(b),(e)+(g): Amended Statement of Operating Conditions; Change of Ownership to be effective 1/2/2020.

Filed Date: 2/3/2020.
Accession Number: 202002035160.
Comments Due: 5 p.m. ET 2/24/2020.
284.123(g) Protests Due: 5 p.m. ET 2/24/2020.

Docket Number: PR20–3–001.
Applicants: Gulf Coast Express Pipeline LLC.
Description: Tariff filing per 284.123(b),(e)/: Amendment to Petition for NGPA Section 311 Rate Approval (0.1.0) to be effective 9/25/2019.
Filed Date: 2/5/2020.
Accession Number: 202002055062.
Comments/Protests Due: 5 p.m. ET 2/19/2020.

Docket Number: PR20–32–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b),(e)/: COH SOC Change effective Feb 1 2020 to be effective 2/1/2020.
Filed Date: 1/31/2020.
Accession Number: 202001315401.
Comments/Protests Due: 5 p.m. ET 2/25/2020.

Docket Number: PR20–33–000.
Applicants: Gulf Coast Express Pipeline LLC.
Description: Tariff filing per 284.123(b),(e)+(g): Amendment to Petition for NGPA Section 311 Rate Approval (1.0.0) to be effective 3/1/2020.
Filed Date: 2/5/2020.
Accession Number: 202002055070.
Comments Due: 5 p.m. ET 2/26/2020.
284.123(g) Protests Due: 5 p.m. ET 2/26/2020.

Docket Numbers: RP20–491–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020420 Negotiated Rates—Sequent Energy Management, L.P. R–3075–13 to be effective 4/1/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5002.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–492–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020420 Negotiated Rates—Castleton Commodities Merchant Trading R–4010–06 to be effective 4/1/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5003.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–493–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020420 Negotiated Rates—Castleton Commodities Merchant Trading R–4010–12 to be effective 4/1/2020.
Filed Date: 2/4/20,
Accession Number: 20200204–5004.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–494–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020420 Negotiated Rates—Castleton Commodities Merchant Trading R–4010–14 to be effective 4/1/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5005.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–495–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020420 Negotiated Rates—Castleton Commodities Merchant Trading R–4010–13 to be effective 4/1/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5006.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–496–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020420 Negotiated Rates—Shell Energy North America (US), L.P. R–2170–14 to be effective 4/1/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5007.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–497–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: Non-Conforming Contract and Miscellaneous Filing to be effective 3/5/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5065.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–331–001.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Compliance filing Prepayments Compliance Filing to be effective 1/15/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5006.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–498–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (BP 46441) to be effective 2/4/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5005.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–499–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020520 Negotiated Rates—Shell Energy North America (US), L.P. R–2170–17 to be effective 4/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5015.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–500–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020520 Negotiated Rates—Shell Energy North America (US), L.P. R–2170–18 to be effective 4/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5016.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–501–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020520 Negotiated Rates—Mercuria Energy America, LLC R–7540–20 to be effective 4/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5018.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–502–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020520 Negotiated Rates—Mercuria Energy America, LLC R–7540–21 to be effective 4/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5019.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–503–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020520 Negotiated Rates—Freepoint Commodities LLC R–7250–29 to be effective 4/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5020.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–504–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 020520 Negotiated Rates—Freepoint Commodities LLC R–7250–28 to be effective 4/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5022.
Comments Due: 5 p.m. ET 2/18/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02815 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2426–227]

California Department of Water Resources and Los Angeles Department of Water and Power; Notice of Application Tendered for Filing with the Commission and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2426–227.

c. *Date filed:* January 30, 2020.

d. *Co-Applicants:* California Department of Water Resources and Los Angeles Department of Water and Power.

e. *Name of Project:* South SWP Hydropower Project,

f. *Location:* Along the West Branch of the California Aqueduct, and along Piru Creek and Castaic Creek, tributaries to the Santa Clara River, in Los Angeles County, California. The project currently occupies 2,790 acres of federal land administered by the U.S. Department of Agriculture, Forest Service, as part of the Angeles National Forest and the Los Padres National Forest; and 17 acres of federal land administered by the U.S. Department of Interior, Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contacts:* Gwen Knittweis, Chief, Hydropower License Planning and Compliance Office, California Department of Water Resources, P.O. Box 924836, Sacramento, California 94236–0001, (916) 557–4554, or *Gwen.Knittweis@water.ca.gov;* and Simon Zewdu, Manager of Strategic Initiatives, Power Planning and Development, Los Angeles Department of Water and Power, 111 North Hope Street, Room 921, Los Angeles, CA 90012, (213) 367–0881, or *Simon.Zewdu@ladwp.com.*

i. *FERC Contact:* Kyle Olcott at (202) 502–8963; or email at *kyle.olcott@ferc.gov*.

j. This application is not ready for environmental analysis at this time.

k. *The project consists of two developments:* Warne Development and Castaic Development. The average annual generation of the South SWP Project from 2007 to 2017 was 304 gigawatt-hours (GWh) at the Warne powerplant and 379 GWh at the Castaic powerplant.

Warne Development

The major features of the Warne Development include: (1) Quail Lake, (2) Lower Quail Canal, (3) Peace Valley pipeline intake embankment, (4) Peace Valley pipeline, (5) Gorman bypass channel, (6) the William E. Warne powerplant (Warne powerplant), (7) switchyard, (8) the transmission line that interconnects Warne powerplant with the Southern California Edison (SCE) Pastoria-Pardee transmission line, and (9) appurtenant facilities.

Quail Lake is a small regulating reservoir along the State Water Project (SWP) that was created by constructing an embankment along a sag pond formed by the San Andreas fault. The lake is located 5 miles southwest of the bifurcation of the East and West branches of the SWP. Quail Lake has a maximum storage capacity of 8,790 acre-feet and a surface area of about 290 acres. The Quail Lake outlet into Lower Quail canal is a double-box culvert structure that passes beneath State Highway 138. Quail Lake and Lower Quail canal serve as a forebay to Warne powerplant. The Lower Quail canal has an emergency outflow weir that is described below, and a spillway is not required for Quail Lake.

Water released from Quail Lake through the Quail Lake outlet flows into the 2-mile-long Lower Quail canal. The concrete-lined canal serves as a conveyance to the Peace Valley pipeline intake and is the forebay for the Warne powerplant. Lower Quail canal has a bottom width of 24 feet, northern embankment height of approximately 50 feet, southern embankment height of about 40 feet, and maximum flow capacity of 3,129 cubic feet per second (cfs). The Lower Quail canal storage capacity is 1,150 acre-feet. An ungated emergency overflow weir is located on the north side of Lower Quail canal. If an unplanned release occurs, water can be discharged over the ungated weir into a detention basin located to the west and adjacent to the southernmost section of Lower Quail Canal.

The Peace Valley pipeline begins at the Peace Valley pipeline intake embankment. The Peace Valley pipeline intake embankment is a zoned earth and rockfill embankment at the downstream end of the Lower Quail canal. The Peace Valley pipeline intake embankment is 50 feet tall, with a crest length of 350 feet, and crest elevation of 3,330 feet.

SWP water flowing from Quail Lake through Lower Quail canal is routed into the Peace Valley pipeline to Warne powerplant and then to Pyramid Lake. The Peace Valley pipeline, which has a 12-foot-diameter and is completely underground, serves as the penstock to the Warne powerplant. It extends about 5.5 miles from the Peace Valley pipeline intake structure to the Warne powerplant. In the event of a Peace Valley pipeline outage or scheduled SWP water releases exceeding the pipeline's capacity, the water is routed through the Gorman bypass channel directly into Pyramid Lake.

The Gorman bypass channel flow capacity is 700 cfs and conveys SWP water from Lower Quail canal to Pyramid Lake, bypassing the Peace Valley pipeline and Warne powerplant, when necessary, with an alignment generally paralleling that of the Peace Valley pipeline. The man-made channel begins at the Peace Valley pipeline intake embankment and crosses Interstate 5 about 0.7 mile downstream from the embankment. Local drainage, if any, drains into the bypass channel near Interstate 5.

The Warne powerplant, an above-ground, steel-reinforced, concrete powerhouse, is located at the northern (upstream) end of Pyramid Lake, at the terminus of the Peace Valley pipeline. The powerplant has two 37.5–MW Pelton-type generating units. Each turbine has a rated head of 650 feet, runner speed of 200 revolutions per minute (rpm), rated output of 51,000 horsepower (hp), and a rated discharge of 782 cfs. The total combined flow capacity for the powerplant is 1,564 cfs.

The project includes a 3-mile-long, single-circuit, 220-kilovolt (kV) transmission line that connects output from the project through the Warne switchyard to SCE's Pardee-Pastoria transmission line. The line is built on steel lattice towers along a 150-foot-wide right-of-way. The Warne switchyard is located west and immediately adjacent to the Warne powerplant and contains two generator step-up transformers.

Castaic Development

The major features of the Castaic Development include: (1) Pyramid dam, (2) Pyramid Lake, (3) the Angeles tunnel and seven penstocks, (4) the Castaic powerplant and switchyard, (5) the Elderberry forebay and dam, (6) storm bypass channel and check dams, (7) the transmission lines that interconnect Castaic switchyard with the Independent System Operator power grid, and (8) appurtenant facilities. DWR owns and operates the facilities above the surge chamber at the southeastern end of the Angeles tunnel, and LADWP owns and operates the remainder of the facilities, including the surge chamber.

Pyramid dam, at the southern end of Pyramid Lake, is a 1,090-foot-long, 400-foot-high zoned earth and rock fill dam. The crest of the dam is 35 feet wide with an elevation of 2,606 feet. Water is typically released from a low-level outlet to an 18-mile-long section of Piru Creek (Pyramid reach), which extends from Pyramid dam to the NMWSE of Lake Piru.

Pyramid dam has two spillways, a gate-controlled spillway, and an uncontrolled emergency spillway. The gated spillway is controlled by a single radial gate that measures 40 feet wide by 31 feet tall and consists of a concrete-lined chute terminating in a flip bucket. The low-level outlet works use the stream bypass tunnel (diversion tunnel) used during construction of the dam. This stream release facility is a 15-foot-diameter, concrete-lined tunnel about 1,350 feet long through the right abutment of the dam and is used for downstream releases to Pyramid reach. Seepage through the dam is also collected at the toe of the dam, where it is gaged before being released into Pyramid reach. The maximum safe, designed release from the low-level outlet of Pyramid dam to Pyramid reach is 18,000 cfs.

Pyramid Lake serves as regulated storage for the Castaic powerplant. At a NMWSE of 2,578 feet, Pyramid Lake has a storage capacity of 169,902 acre-feet and a usable storage capacity of 22,221 acre-feet. Pyramid Lake also serves as emergency storage for the SWP. The lake has a normal maximum surface area of approximately 1,300 acres, a shoreline length of approximately 21 miles, and a maximum depth of approximately 280 feet. Pyramid Lake receives natural inflow into the west arm of the lake from Piru Creek, and a combination of natural and SWP water inflows into the north arm of the lake from Gorman bypass channel and Gorman Creek.

Angeles tunnel, the principal outlet from Pyramid Lake, supplies water to the Castaic powerplant in the generating mode and returns water to the lake from Elderberry forebay when the powerplant is operating in the pumping mode. Angeles tunnel is 7.2 miles long, has a diameter of 30 feet, and has a maximum flow capacity of 18,400 cfs.

The penstock assembly for the six units in the Castaic powerplant consists of a double trifurcation immediately downstream of the south portal of Angeles tunnel, a penstock shutoff valve on each branch of the trifurcations, and six 2,200-foot-long steel penstocks ranging in diameter from 9 feet to 13.5 feet serving the six powerhouse units (Unit Nos. 1–6). Unit No. 7 powerplant is served by a 1,900-foot-long steel penstock ranging in diameter from 7 feet to 9 feet branching from a Y-connection between the tunnel portal and the main trifurcation. Combined flow capacity for all seven penstocks is 17,840 cfs.

The Castaic powerplant, an aboveground/underground, steel-reinforced, concrete powerhouse, is located on the northern (upstream) end of Elderberry forebay and is a pump-generating plant with the ability to pump water back to Pyramid Lake using off-peak energy when it is economical to do so. Elderberry forebay serves as an afterbay for the Castaic powerplant while in generating mode and as a forebay while in pumping mode. Pyramid Lake serves as the upper reservoir for the powerplant.

The powerplant has six Francis-type pump-turbine units each with a rated head of 1,048 feet, a runner speed of 257 rpm, a rated output of 355,000 hp, and an estimated rated discharge of 3,500 cfs. It also has one Pelton-type pump starting turbine unit with a rated head of 950 feet, a runner speed of 225 rpm, rated output of 69,000 hp, and an approximate rated discharge of 752 cfs. These seven units have a combined generating capacity of 1,275 MW with a plant hydraulic capacity of 17,840 cfs.

Elderberry forebay dam is a 1,990-foot-long, 200-foot-high zoned earthfill dam. The crest of the dam is 25 feet wide with an elevation of 1,550 feet. The outlet tower, located approximately 400 feet upstream of Elderberry forebay dam, includes: One 5-foot-wide by 6-foot-high main gate, six 8-foot-wide by 12-foot-high lower gates, two 8-foot-wide by 9-foot-high upper gates, twelve 13-foot-wide by 12-foot-high storm gates, and one 5-foot-wide by 6-foot-high guard gate. The outlet tower connects to a 21-foot-diameter conduit that runs under Elderberry forebay dam and releases water into Castaic Lake (a non-project facility).

An overflow weir built into a natural topographic saddle located approximately 300 feet east of the left abutment of the dam serves as an uncontrolled emergency spillway. The crest elevation of the overflow weir is 1,540 feet, with a capacity of at least 12,000 cfs. Elderberry forebay dam, including this emergency spillway, is the most downstream project facility.

Elderberry forebay serves as an afterbay for the Castaic powerplant when the plant is generating power, and as a forebay when the plant is pumping water back to Pyramid Lake. The forebay also receives a small amount of local inflow from Castaic Creek, which enters at the northern end of the reservoir. The remaining inflow to Elderberry forebay is SWP water from Pyramid Lake conveyed via the Angeles tunnel. At a NMWSE of 1,530 feet, Elderberry forebay has a storage capacity of 28,231 acre-feet, a surface area of 500 acres, and a shoreline length of 7 miles.

The Storm bypass channel is on Castaic Creek above Elderberry forebay and includes a series of three check-dam basins with a total area of approximately 21 acres, designed to capture sediment runoff during high flow events to reduce the accumulation of sediment near the powerplant and ensure the sustained efficiency of the Castaic powerplant operation.

The Castaic switchyard is a fenced switchyard located adjacent to the powerhouse. An 11.4-mile-long, 230-kV transmission line delivers energy from the Castaic switchyard to the Haskell Junction substation and transmits energy to the Castaic powerplant when in the pump-back operating mode.

Co-Licensees' Proposed Modifications

In their Final License Application, the co-licensees propose to add the following facilities to the project license: The existing Quail Detention Embankment, segments of some existing roads necessary for project operation and maintenance, and an existing streamflow gage located on Piru Creek downstream of Pyramid Dam. Additionally, the co-licensees propose to remove the Warne Transmission Line from the project license.

The co-licensees also propose to modify the project boundary to reduce the amount of land from 6,928 acres to 4,563.8 acres. The project, as proposed by the licensee, would reduce the amount of federal land from 2,790 acres to 2,007 acres of federal lands: 1,336 acres administered by the U.S. Department of Agriculture, Forest Service, as part of the Angeles National Forest; 665 acres administered by the

U.S. Department of Agriculture, Forest Service, as part of the Los Padres National Forest; and 6.5 acres administered by the U.S. Department of the Interior, Bureau of Land Management.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

m. 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, contact FERC Online Support.

n. Procedural schedule and final amendments: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	April 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	June 2020.
Commission issues Draft EIS	December 2020.
Comments on Draft Environmental Impact Statement (EIS)	February 2021.
Modified terms and conditions	April 2021.
Commission issues Final EIS	July 2021.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02809 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3240–039]

Briar Hydro Associates, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 3240–039.

c. *Date Filed:* November 29, 2019.

d. *Submitted By:* Briar Hydro Associates, LLC (Briar Hydro).

e. *Name of Project:* Rolfe Canal Hydroelectric Project.

f. *Location:* On the Contoocook River, in the Village of Penacook and City of Concord, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Andrew J. Locke, Essex Hydro Associates, LLC, 55 Union Street, Boston, MA 02108; (617) 357–0032; email—*alocke@essexhydro.com.*

i. *FERC Contact:* Jeanne Edwards at (202) 502–6181; or email at *jeanne.edwards@ferc.gov.*

j. Briar Hydro filed its request to use the Traditional Licensing Process on November 29, 2019. Briar Hydro provided public notice of its request on December 12, 2019. In a letter dated February 6, 2020, the Director of the Division of Hydropower Licensing approved Briar Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act, and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Briar Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On November 28, 2019, Briar Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3240. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2022.

p. 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, contact FERC Online Support.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02810 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–21–000]

Port Arthur Pipeline, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Louisiana Connector Amendment Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of

the Louisiana Connector Amendment Project (Project) involving construction and operation of facilities by Port Arthur Pipeline, LLC (PAPL) in Beauregard Parish, Louisiana. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the Project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 6, 2020.

You can make a difference by submitting your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this Project to the Commission before the opening of this docket on December 9, 2019, you will need to file those comments in Docket No. CP20–21–000 to ensure they are considered as part of this proceeding. If you have already filed comments in Docket No. CP20–21–000, you do not need to file those comments again.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

PAPL provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing'';

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (CP20–21–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426;

(4) Newly affected landowners wishing to obtain legal status by becoming a party to the proceeding for this project should, on or before the comment date (March 6, 2020), 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 3 copies of filings made with the Commission and must provide 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; or

(5) In lieu of sending written comments, the Commission invites you to attend the public scoping session its staff will conduct in the Project area, scheduled as follows:

Date and time	Location
Wednesday, March 4, 2020, 4:00 p.m. to 7:00 p.m., Central Time.	South Beauregard Recreation District Community Center, 6719 Highway 12, Ragley, LA 70657, 337–725–3717.

Please note that staff may conclude the session at 6:30 p.m. if all attendees planning to provide comments have done so.

The primary goal of the scoping session is to have you identify the specific environmental issues and concerns that should be considered in the EA. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

The scoping session is scheduled from 4:00 p.m. to 7:00 p.m. Central Time. You may arrive any time at or after 4:00 p.m.. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 7:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 6:30 p.m. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 3 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided verbally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from PAPL will also be present to answer Project-specific questions.

Summary of the Proposed Project

PAPL proposes to amend its April 18, 2019 Order Issuing Certificate for the Louisiana Connector Project (CP18–7–000) by constructing and operating a compressor station in Beauregard Parish, Louisiana (the Beauregard Parish Compressor Station or BPCS) in lieu of the compressor station previously certificated in Allen Parish, Louisiana. The compressor station proposed for this Project would be constructed as part of the Louisiana Connector Project.

In its December 9, 2019 Amendment Application, PAPL proposed to locate the BPCS within the previously certificated Beauregard Parish Contractor Yard (LYBEA–01) and workspace associated with pipeline construction at milepost (MP) 72.3. However, on January 31, 2020, PAPL filed to relocate the new BPCS site approximately 0.75 mile south of Gaytine Road, to a location adjacent to and west-southwest of Cameron Interstate Pipeline, LLC's existing Ragley Compressor Station.[2] The proposed site would be approximately 2,750 feet directly south of the initially proposed BPCS location described in PAPL's December 9, 2019 Amendment Application. The new location for the BPCS would be south of and adjacent to the main pipeline corridor and would use the same mainline connection and interconnect location points near MP 72.3 as previously proposed.

As part of the Project, PAPL would:

- Relocate the previously authorized compressor station consisting of four Solar Titan 130E gas turbine driven compressors in Allen Parish from MP 96.1, to MP 72.3 in Beauregard Parish, increasing horsepower from 89,900 to 93,880;
- relocate an interconnect with the Texas Eastern Transmission Company from MP 96.1 to MP 72.3;
- relocate pig launcher/receiver facilities from MP 96.1 to MP 72.3;
- construct three new pipeline interconnections with Cameron Intrastate Pipeline, Transcontinental Gas Pipeline, and Louisiana Storage at MP 72.3;
- construct one new mainline block valve at MP 72.3, resulting in a total of 10 mainline valves on the Louisiana Connector Project; and
- use the former Allen Parish compressor station site at MP 96.1 as a contractor yard.

The Project facilities would result in a slight increase in the overall capacity of feed gas to the approved Port Arthur Liquefaction facility from approximately 1.98 to 2.05 billion cubic feet per day. The Project would allow gas from additional sources to supply the liquefaction facility.

The general location of the Project facilities is shown in appendix 2.

Land Requirements for Construction

The Project facilities would disturb approximately 59.9 acres, all of which would be permanently maintained as aboveground facilities or right-of-way.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- socioeconomics;
- cultural resources;
- land use;
- air quality and noise;
- alternatives;
- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary[3] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] Newly affected landowners have an opportunity to file for timely intervention during this scoping period, which ends on March 6, 2020.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the Louisiana State Historic Preservation Office, and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[5] The EA for this Project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities; the environmental information provided by PAPL; and comments already received, as listed below. This preliminary list of issues may change based on your comments and our analysis.

- Alternative compressor station locations
- Traffic on Gaytine Road
- Impact on property values
- Proposed developments near the compressor station
- Cumulative impacts

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP20–21). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02822 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–274]

Central Nebraska Public Power and Irrigation District; 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 for a temporary variance from release restriction requirements.

b. *Project No.:* 1417–274.

c. *Date Filed:* January 21, 2020.

d. *Applicant:* Central Nebraska Public Power and Irrigation District (Central).

e. *Name of Project:* Kingsley Dam Project

f. *Location:* The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties in south-central Nebraska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Michael A. Drain, P.E., Central, P.O. BOX 740, 415 Lincoln Street, Holdrege, NE 68949–0740, (308) 995–8601.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* February 21, 2020.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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–1417–274. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Central requests Commission approval for a temporary modification of the current restrictions of releases at or above flood stage (as defined by the National Weather Service) from the Environmental Account (an account of storage water in Lake McConaughy to be released for environmental purposes) at North Platte. The request would only apply to release restrictions at North Platte site from March 1 through September 30, 2020 in order to test the channel capacity improvements. The Platte Recovery Implementation Program (Platte Program) estimates that the channel can pass flows at or near a stage of 6.6 feet without causing

flooding. The current NWS designated flood stage for the North Platte River at North Platte is 6.0 feet. Central has consulted and received concurrence for this temporary variance from the Platte Program, the U.S. Fish and Wildlife Service, and the Nebraska Public Power District.

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. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, 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. 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 385.2010.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02808 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–481–000]

BP Energy Company v. Natural Gas Pipeline Company of America LLC; Notice of Complaint

Take notice that on January 31, 2020, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2019), BP Energy Company (Complainant) filed a formal complaint against Natural Gas Pipeline Company of America LLC (NGPL or Respondent) requesting the Commission to direct NGPL to follow its FERC Gas Tariff, section 4 of the Natural Gas Act and the Commission's regulations thereunder as it relates to certain rights of first refusal provisions, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on Respondent's corporate representatives designated on the Commission's Corporate Officials List.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 20, 2020.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02804 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–484–000; Docket No. CP19–488–000]

Kinder Morgan Louisiana Pipeline LLC; Columbia Gulf Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Acadiana Project and the Louisiana Xpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Acadiana Project and Louisiana Xpress Project, proposed by Kinder Morgan Louisiana Pipeline LLC (KMLP) and Columbia Gulf Transmission, LLC (Columbia Gulf) respectively in the above-referenced dockets.

KMLP requests authorization to construct and operate three new natural gas-fired compressor units (31,900 horsepower [hp] each) at its existing Compressor Station 760 in Acadia Parish, Louisiana, make modifications to meter piping and new control valves at its existing meter station in Evangeline Parish, Louisiana, as well as install auxiliary facilities at both locations. The Acadiana Project would increase the north-south natural gas delivery capacity on KMLP's pipeline system by approximately 894 million cubic feet per day.

Columbia Gulf requests authorization to construct and operate three new greenfield compressor stations (totaling 46,940 hp each) and modify one existing compressor station in East Carroll, Catahoula, Evangeline, and Rapides Parishes, Louisiana. The Louisiana Xpress Project would provide an additional 850 million cubic feet of open access firm transportation capacity from a primary receipt point at Columbia Gulf's Mainline Pool to a primary delivery point at an interconnection with KMLP in Evangeline Parish, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in both project areas. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP19–484 or CP19–488. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on March 9, 2020.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–484–000 or CP19–488–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02805 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6689–017]

Briar Hydro Associates, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 6689–017.

c. *Date Filed:* November 29, 2019.

d. *Submitted By:* Briar Hydro Associates, LLC (Briar Hydro).

e. *Name of Project:* Rolfe Canal Hydroelectric Project.

f. *Location:* On the Contoocook River, in the Village of Penacook and City of Concord, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Andrew J. Locke, Essex Hydro Associates, LLC, 55 Union Street, Boston, MA 02108; (617) 357–0032; email—*alocke@essexhydro.com.*

i. *FERC Contact:* Jeanne Edwards at (202) 502–6181; or email at *jeanne.edwards@ferc.gov.*

j. Briar Hydro filed its request to use the Traditional Licensing Process on November 29, 2019. Briar Hydro provided public notice of its request on December 12, 2019. In a letter dated February 6, 2020, the Director of the Division of Hydropower Licensing approved Briar Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Briar Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On November 28, 2019, Briar Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 6689. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2022.

p. 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, contact FERC Online Support.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02812 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF19–4–000]

Venture Global Delta LNG, LLC; Venture Global Delta Express, LLC; Supplemental Notice of Intent for the Planned Delta LNG and Delta Express Pipeline Project Request for Comments on Environmental Issues Related to Project Modifications Under Consideration

On January 22, 2020, the Federal Energy Regulatory Commission (FERC or Commission) issued a ''*Supplemental Notice of Intent for the Planned Delta LNG and Delta Express Pipeline Project Request for Comments on Environmental Issues Related to Project Modifications Under Consideration*'' (Notice). It has come to our [1] attention that the environmental mailing list was not provided copies of the Notice; therefore we are reissuing this Notice to extend the scoping period and provide additional time for interested parties to file comments on environmental issues.

As previously noticed on July 30 and October 16, 2019, and supplemented herein, the staff of the Commission will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Delta LNG and Delta Express Pipeline Project (Project) involving construction and operation of facilities by Venture Global Delta LNG, LLC and Venture Global Delta Express, LLC (collectively referred to as Delta LNG) in Richland, Franklin, Catahoula, Concordia, Avoyelles, St. Landry, Pointe Coupee, West Baton Rouge, Iberville, Ascension, Assumption, Lafourche, Jefferson, and Plaquemines Parishes, Louisiana.

With this Notice we are specifically seeking comments on modifications to the Delta Express Pipeline proposed by Delta LNG on January 10, 2020. Delta LNG incorporated the modifications based on comments from regulatory agencies and landowners, and detailed environmental and constructability considerations. The Commission is issuing this Notice to provide previously and newly identified landowners and other stakeholders an opportunity to comment on the Project modifications.

This Notice is being sent to the Commission's current environmental mailing list for this Project, including newly affected landowners. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a newly affected landowner receiving this Notice, a Delta LNG representative may have already contacted you or may contact you soon about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if the easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with applicable law.

The FERC is the lead federal agency responsible for conducting the environmental review of the Project. As mentioned above, the Commission's staff is preparing an EIS that discusses the environmental impacts of the Project. The EIS will be used to inform the Commission as it determines whether to approve the Project.

This Notice announces the opening of an additional scoping period the Commission will use to gather input from landowners potentially affected by the Project. Comments may be submitted in writing as described in the public participation section of this Notice. Please note that the scoping period is now extended, and comments on this Notice should be filed with the Commission by March 9, 2020. If you sent comments on this Project prior to the opening of this additional comment period, you do not need to refile your comments. We have received your comments and will use the information in the preparation of the EIS.

Information in this Notice was prepared to notify previously and newly affected landowners of the Project modifications, inform them about the Commission's environmental review process, and instruct them on how to submit comments.

To help potentially affected landowners better understand the Commission and its environmental review process, the ''For Citizens'' section of the FERC website (*www.ferc.gov*) provides information about getting involved in FERC jurisdictional projects. A citizens' guide entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need to Know?'' is also available in this section of the Commission's website. This guide addresses a number of frequently asked questions, including the use of eminent domain and how to

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

participate in the Commission's proceedings.

Summary of the Proposed Project Changes

The Project would involve the construction of a liquefied natural gas (LNG) export terminal in Plaquemines Parish, Louisiana and the approximately 285-mile-long Delta Express Pipeline located within 14 parishes in Louisiana. Domestically sourced natural gas would be transported by the Delta Express Pipeline to the Delta LNG terminal, which would produce, store, and deliver up to 24 million tons per annum of LNG to LNG carriers for export overseas.

Delta LNG previously proposed to construct two parallel 42-inch-diameter pipelines within a single right-of-way and four natural gas-fired compressor stations. Delta LNG no longer proposes to construct the Monterey Compressor Station at milepost (MP) 70.3 in Concordia Parish; the Fordoche Compressor Station at MP 137.9 in Pointe Coupee Parish; or the Belle Rose Compressor Station at MP 200.8 in Assumption Parish.

No modifications of the terminal are proposed. Delta LNG has reduced the facilities associated with the Delta Express Pipeline and now proposes to construct:

- A single 48-inch-diameter pipeline along the previously proposed route; and
- two natural gas-fired compressor stations.

The two compressor stations would consist of the previously planned Alto Compressor Station at MP 0.0 in Richland Parish and the newly proposed Melville Compressor Station at MP 131.2 in Pointe Coupee Parish.

A map depicting the location of the newly proposed Melville Compressor Station is included in appendix 1.[2]

Delta LNG is not proposing any modifications to the planned route of the Delta Express Pipeline.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files, which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (PF19–4–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 2.

The EIS Process

The EIS will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation, fisheries, and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate possible alternatives to the planned Project or portions of the Project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, Commission staff have initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff have contacted federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present Commission staffs' independent analysis of the issues. The draft EIS will be available in electronic format in the public record through eLibrary[3] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the draft EIS is issued. The draft EIS will be issued for an allotted public comment period. After the comment period on the draft EIS, Commission staff will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure Commission staff have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 3.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this Notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] The EIS for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

[2] The appendices referenced in this Notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this Notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371.

[3] For instructions on connecting to eLibrary, refer to the last page of this Notice.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Delta LNG. This preliminary list of issues may change based on your comments and our analysis:

- Impacts on wetlands including coastal marsh and forested wetlands;
- cumulative impacts on air quality, noise, wetlands, socioeconomics, and other resources associated with construction and operation of the planned Delta LNG export terminal and the nearby Plaquemines LNG export terminal and other large projects at various stages of planning and construction in the region;
- LNG terminal site alternatives;
- Delta Express Pipeline route alternatives;
- Environmental Justice impacts; and
- alternative construction methods and workspace configurations that would avoid or reduce impacts.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

A *Notice of Availability* of the draft EIS will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Becoming an Intervenor

Once Delta LNG files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* PF19–4). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits, if any are planned, will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02813 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–21–000]

Complaint of Michael Mabee Related to Critical Infrastructure Reliability Standard; Notice of Complaint

Take notice that on January 30, 2020, pursuant to section 215(d) of the Federal Power Act, 16 U.S.C. 824o(d) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2019), Michael Mabee, (Complainant) filed a formal complaint alleging that Critical Infrastructure Protection Reliability Standard (CIP–014–2) (physical security) is inadequate, as more fully explained in the complaint.

Complainant certifies that copies of the Complaint were served on the contacts as listed on the Commission's list of Corporate Officials.

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. All interventions, or protests must be filed on or before the comment date.

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 electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 Eastern Time on March 2, 2020.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02806 Filed 2–11–20; 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 exempt wholesale generator filings:

Docket Numbers: EG20–73–000.
Applicants: Northern Colorado Wind Energy Center, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Northern Colorado Wind Energy Center, LLC.
Filed Date: 2/3/20.
Accession Number: 20200203–5252.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: EG20–74–000.
Applicants: Blythe Solar III, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blythe Solar III, LLC.
Filed Date: 2/3/20.
Accession Number: 20200203–5253.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: EG20–75–000.
Applicants: Blythe Solar IV, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blythe Solar IV, LLC.
Filed Date: 2/3/20.
Accession Number: 20200203–5254.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: EG20–76–000.
Applicants: ENGIE Long Draw Solar LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of ENGIE Long Draw Solar LLC.
Filed Date: 2/4/20.
Accession Number: 20200204–5147.
Comments Due: 5 p.m. ET 2/25/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1858–008.
Applicants: NorthWestern Corporation.
Description: Supplement to Triennial Market Power Analysis for the Northwest Region of NorthWestern Corporation.
Filed Date: 2/3/20.
Accession Number: 20200203–5013.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER15–704–015.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: Corrections to Compliance filing CCSF WDT SA and IA (SA 275) to be effective 7/1/2015.
Filed Date: 2/4/20.
Accession Number: 20200204–5094.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER15–704–016.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: Corrections to Compliance filing CCSF WDT SA and IA (SA 275) to be effective 7/23/2015.
Filed Date: 2/4/20.
Accession Number: 20200204–5096.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER19–1730–002.
Applicants: Wind Park Bear Creek, L.L.C.
Description: Compliance filing: Compliance Filing for Docket ER19–1730 to be effective 6/29/2019.
Filed Date: 2/5/20.
Accession Number: 20200205–5095.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER19–1886–002.
Applicants: Stony Creek Wind Farm, LLC.
Description: Compliance filing: Compliance Filing for Docket ER19–1886 to be effective 7/17/2019.
Filed Date: 2/5/20.
Accession Number: 20200205–5084.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–457–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Response to Commission's Deficiency Letter dated January 16, 2020 to be effective 1/10/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5096.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–647–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2020–02–05 Amendment to MISO PJM JOA Constraint Relaxation Filing to be effective 2/18/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5114.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–648–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Dec 19, 2019 Filing of Rev to MISO–PJM JOA re Constraint Relaxation to be effective 2/18/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5099.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–780–001.
Applicants: Sooner Wind, LLC.
Description: Tariff Amendment: Sooner Wind, LLC Amendment to the Application for Market-Based Rates to be effective 3/14/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5115.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–955–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Rev to Tariff and OA re Parameter Limited Schedules to be effective 4/6/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5104.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–956–000.
Applicants: Thunderhead Wind Energy LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 4/6/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5074.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–956–001.
Applicants: Thunderhead Wind Energy LLC.
Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 4/6/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5079.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–957–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of Multiple Service Agreements for Network Integration Transmission to be effective 3/1/2020.
Filed Date: 2/5/20.
Accession Number: 20200205–5098.
Comments Due: 5 p.m. ET 2/26/20.

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: February 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02821 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2322–069]

Brookfield White Pine Hydro LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2322–069.

c. *Date Filed:* January 31, 2020.

d. *Applicant:* Brookfield White Pine Hydro LLC (Brookfield).

e. *Name of Project:* Shawmut Hydroelectric Project.

f. *Location:* The existing project is located on the Kennebec River in Kennebec and Somerset Counties, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Frank Dunlap, 150 Main Street, Lewiston, Maine 04240; (207) 755–5603.

i. *FERC Contact:* Matt Cutlip, (503) 552–2762 or *matt.cutlip@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The project consists of the following constructed facilities: (1) A 24-foot-high, 1,480-foot-long concrete gravity dam consisting of: (i) A 380-foot-long overflow section with hinged flashboards, (ii) a 730-foot-long overflow section with an inflatable bladder, (iii) 25-foot-wide sluice section; (iv) a non-overflow section; and (v) a headworks containing 11 headgates that regulate flow into a forebay; (2) a 1,310-acre impoundment extending about 12 miles upstream; (3) two powerhouses adjacent to the forebay, separated by a 10-foot-high by 7-foot-wide Tainter gate and a 6-foot-high by 6-foot-wide deep gate; (4) eight turbine-generating units; (5) a 300-foot-long tailrace; (6) 250-foot-long generator leads connecting the powerhouses with a substation; and (7) appurtenant facilities.

Brookfield operates the project in a run-of-river mode and implements specific operating procedure to facilitate upstream and downstream fish passage at the project. Upstream passage for American eel is provided by a dedicated eel passage facility located adjacent to one of the powerhouses. There are no constructed upstream anadromous fishways at the project. Currently anadromous fish are captured and transported upstream of the Shawmut Project via a fish lift and transport system at the Lockwood Dam Hydroelectric Project No. 2574, located about 6 miles downstream. Downstream fish passage for American eel and anadromous fish at the Shawmut Project is provided via a combination of routing flows through the project's spillways, turbines, and other flow regulating equipment (*e.g.,* Tainter gate between the powerhouses).

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. 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, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	March 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	May 2020.
Commission issues Draft Environmental Assessment (EA)	November 2020.
Comments on Draft EA	December 2020.
Modified terms and conditions	February 2021.
Commission issues Final EA	May 2021.

o. Final amendments to the application must be filed with the Commission no later than thirty (30) days from the issuance date of the notice of ready for environmental analysis.

Dated: February 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02823 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3342–023]

Briar Hydro Associates, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 3342–023.

c. *Date Filed:* November 29, 2019.

d. *Submitted By:* Briar Hydro Associates, LLC (Briar Hydro).

e. *Name of Project:* Penacook Lower Falls Hydroelectric Project.

f. *Location:* On the Contoocook River, in Merrimack County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Andrew J. Locke, Essex Hydro Associates, LLC, 55 Union Street, Boston, MA 02108; (617) 357–0032; email—*alocke@essexhydro.com.*

i. *FERC Contact:* Jeanne Edwards at (202) 502–6181; or email at *jeanne.edwards@ferc.gov.*

j. Briar Hydro filed its request to use the Traditional Licensing Process on November 29, 2019. Briar Hydro provided public notice of its request on December 12, 2019. In a letter dated February 6, 2020, the Director of the Division of Hydropower Licensing

approved Briar Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Briar Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On November 28, 2019, Briar Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3342. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2.

p. 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, contact FERC Online Support.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02811 Filed 2–11–20; 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 exempt wholesale generator filings:

Docket Numbers: EG20–77–000.
Applicants: FirstEnergy Nuclear Generation, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of FirstEnergy Nuclear Generation, LLC.
Filed Date: 2/4/20.
Accession Number: 20200204–5183.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: EG20–78–000.
Applicants: Cambria Wind, LLC.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of Cambria Wind, LLC.
Filed Date: 2/5/20.
Accession Number: 20200205–5170.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: EG20–79–000.
Applicants: Thunderhead Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Thunderhead Wind Energy LLC.
Filed Date: 2/5/20.
Accession Number: 20200205–5172.
Comments Due: 5 p.m. ET 2/26/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2390–005; ER19–784–001; ER10–2394–006; ER12–1563–006; ER10–2395–006; ER10–2422–007; ER12–1562–006; ER11–3642–019.
Applicants: Bicent (California) Malburg LLC, Big Country Datalec LLC, BIV Generation Company, L.L.C., Cayuga Operating Company, LLC, Colorado Power Partners, Rocky Mountain Power, LLC, Somerset Operating Company LLC, Tanner Street Generation, LLC.
Description: Notice of Non-Material Change in Status of Bicent (California) Malburg LLC, et. al.
Filed Date: 2/5/20.
Accession Number: 20200205–5153.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER15–1873–012; ER18–471–006; ER18–472–006;ER16–1720–011; ER20–383–002; ER20–384–002; ER20–385–002; ER20–386–002; ER20–387–002ER20–388–002.
Applicants: Buckeye Wind Energy LLC, States Edge Wind I LLC, Invenergy Energy Management LLC, States Edge Wind I Holdings LLC, Maverick Wind Project, LLC, Maverick Wind Project Holdings LLC, Sundance Wind Project, LLC, Sundance Wind Project Holdings LLC, Traverse Wind Energy LLC, Traverse Wind Energy Holdings LLC.
Description: Notice of Change in Facts of Buckeye Wind Energy LLC, et al.
Filed Date: 2/6/20.
Accession Number: 20200206–5083.
Comments Due: 5 p.m. ET 2/27/20.

Docket Numbers: ER20–958–000.
Applicants: Sierra Pacific Power Company.
Description: Notice of Termination of Service Agreement (No. 17–00040) of Sierra Pacific Power Company.
Filed Date: 2/5/20.
Accession Number: 20200205–5149.
Comments Due: 5 p.m. ET 2/26/20.

Docket Numbers: ER20–959–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No 5589; Queue No. AE2–115 to be effective 1/8/2020.
Filed Date: 2/6/20.
Accession Number: 20200206–5094.
Comments Due: 5 p.m. ET 2/27/20.

Docket Numbers: ER20–960–000.
Applicants: New England Power Company.
Description: Tariff Cancellation: Notice of Cancellation of Facilities Use Agreement with Deepwater Wind to be effective 4/7/2020.
Filed Date: 2/6/20.
Accession Number: 20200206–5126.
Comments Due: 5 p.m. ET 2/27/20.

Docket Numbers: ER20–961–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5153; Queue No. AD1–157 (consent) to be effective 7/23/2018.
Filed Date: 2/6/20.
Accession Number: 20200206–5128.
Comments Due: 5 p.m. ET 2/27/20.

Docket Numbers: ER20–962–000.
Applicants: The Narragansett Electric Company.
Description: Tariff Cancellation: Cancellation of Indemnification Agreement with the Deepwater Wind Companies to be effective 4/7/2020.
Filed Date: 2/6/20.
Accession Number: 20200206–5130.
Comments Due: 5 p.m. ET 2/27/20.

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 85.211 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: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02814 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–49–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on January 31, 2020, Transcontinental Gas Pipe Line Company, LLC (Transco), PO Box 1396, Houston, Texas 77251–1396, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157(A) of the Commission's regulations for authorization to amend its certificate granted in Docket No. CP17–101–000 for its Northeast Supply Enhancement Project. Transco seeks authorization to utilize and extend an existing road to access Compressor Station 206 in Somerset County, New Jersey in lieu of constructing the new, certificated access road. Transco asserts that the proposal will enable it to comply with requirements from the New Jersey Department of Environmental Protection and will reduce wetland impacts, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Andre Pereira, Regulatory Analyst, Senior, Transcontinental Gas Pipe Line Company, LLC, PO Box 1396, Houston, Texas 77251–1396 by telephone at (713) 215–4362.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within Ninety (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 Ninety (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 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. 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 commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

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 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: February 26, 2020.

Dated: February 5, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02820 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
EL16–49–000	1–23–2020	The Hershey Company.
Exempt:		
P–199–205	1–22–2020	National Oceanic and Atmospheric Administration.
EL16–49–000	1–29–2020	U.S. Congress [1].
CP19–491–000	1–29–2020	FERC Staff [2].
CP16–22–000	2–4–2020	U.S. Senator Sherrod Brown.

Dated: February 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02816 Filed 2–11–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10005–38–OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2019 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed final calculations for the second round of allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2019 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA has also completed calculations for allocations of the remaining 2019 NUSA allowances to existing units and has posted spreadsheets containing those calculations on EPA's website as well.

DATES: February 12, 2020.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov* or Andrew Reighart at (202) 564–0418 or *reighart.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), and 97.811(b) and 97.812 (NO_X Ozone

[1] Congressman Donald S. Beyer Jr., Congressman Mike Quigley, Congressman Matt Cartwright, Congressman Jared Huffman, Congressman Alan Lowenthal, Congresswoman Bonnie Watson Coleman, Congresswoman Jamie Raskin, Congresswoman Jan Schakowsky, Congresswoman Nanette Diaz Barragan, Congressman Sean Casten, Congresswoman Eleanor Holmes Norton, Congressman Gerald E. Connolly, Congressman Mark Takano, Congressman Bill Foster, Congressman David E. Price, Congresswoman Cheri Bustos, Congresswoman Kathy Castor, Congresswoman Mary Gay Scanlon, Congressman Jose E. Serrano, Congressman Adriano Espaillat, Congressman Brendan F. Boyle, Congressman Danny K. Davis, Congressman Raul M. Grijalva, Congresswoman Yvette D. Clarke, Congresswoman Abigail D. Spanberger, Congressman David Trone, Congressman Mike Doyle, Congresswoman Susan Wild, Congresswoman Pramila Jayapal, Congressman Darren Soto, Congresswoman Deb Haaland, Congressman Eliot L. Engel, Congressman John P. Sarbanes, Congressman Jusus G. ''Chuy'' Garcia, Congressman C.A. Dutch Ruppersberger, and Congressman Bobby L. Rush

[2] Forwarding email dated January 29, 2020 with U.S. Fish and Wildlife Service.

Season Group 2). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.

In a notice of data availability (NODA) published in the **Federal Register** on December 9, 2019 (84 FR 67265), EPA provided notice of the preliminary identification of units eligible to receive second-round NUSA allocations for the 2019 control periods and described the process for submitting any objections. EPA received no objections in response to the December 9, 2019 NODA. This NODA provides notice of EPA's calculations of the amounts of the second-round 2019 NUSA allocations to the previously identified eligible new units and the allocations of the remaining allowances to existing units.

The detailed unit-by-unit data and final allowance allocation calculations are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2019_NOx_Annual_2nd_Round_Final_Data_New_Units,'' ''CSAPR_NUSA_2019_NOx_OS_2nd_Round_Final_Data_New_Units,'' ''CSAPR_NUSA_2019_SO_2_2nd_Round_Final_Data_New_Units,'' ''CSAPR_NUSA_2019_NOx_Annual_2nd_Round_Final_Data_Existing_Units,'' ''CSAPR_NUSA_2019_NOx_OS_2nd_Round_Final_Data_Existing_Units,'' and ''CSAPR_NUSA_2019_SO_2_2nd_Round_Final_Data_Existing_Units'', available on EPA's website at *https://www.epa.gov/csapr/csapr-compliance-year-2019-nusa-nodas.*

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).)

Dated: February 3, 2020.

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2020–02801 Filed 2–11–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2019–0706; FRL–10004–79–OAR]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2018 is available for public review. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2020, as well as subsequent inventory reports.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments by March 13, 2020. However, comments received after that date will still be welcomed and considered for the next edition of this report.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0706, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. Do not submit electronically any information you consider to be Confidential Business Information (CBI). Comments can also be submitted in hardcopy to GHG Inventory at: Environmental Protection Agency, Climate Change Division (6207A), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Fax: (202) 343–2342. You are welcome and encouraged to send an email with your comments to *GHGInventory@epa.gov.* EPA may publish any comment received to its public docket, submitted in hardcopy or sent via email. For additional submission methods, the full EPA public comment policy, information about CBI, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Mausami Desai, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9381, *GHGInventory@epa.gov.*

SUPPLEMENTARY INFORMATION: Annual U.S. emissions for the period of time from 1990 through 2018 are summarized and presented by sector, including source and sink categories. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3) emissions. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2018 is the latest in a series of annual, policy-neutral U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2020, as well as subsequent inventory reports. The draft report is available at *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks.*

Christopher Grundler,

Director, Office of Atmospheric Programs.

[FR Doc. 2020–02139 Filed 2–11–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0126, OMB 3060–0674, OMB 3060–0717, 3060–1203; FRS 16477]

Information Collections Being Submitted for Review and Approval to 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, 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. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for 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 March 13, 2020. If you anticipate that you will be submitting comments but find it difficult to do so with 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 Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@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 Cathy Williams at (202) 418–2918. 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 Title 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, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0126.

Title: Section 73.1820, Station Log.

Form Number: N/A.

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: 15,200 respondents; 15,200 responses.

Estimated Time per Response: 0.017–0.5 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 15,095 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1820 require that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Broadcast System (EBS) for commercial stations.

OMB Control Number: 3060–0674.

Title: Section 76.1618, Basic Tier Availability.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8,250 respondents; 8,250 responses.

Estimated Time per Response: 2.25 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 4(i) and Section 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 18,563 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 76.1618 state that a cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information: (a) That basic tier service is available; (b) the cost per month for basic tier service; and (c) a list of all services included in the basic service tier. These notification requirements are to ensure the subscribers are made aware of the availability of basic cable service at the time of installation.

OMB Control No.: 3060–1203.

Title: Section 79.107 User Interfaces Provided by Digital Apparatus; Section 79.108 Video Programming Guides and Menus Provided by Navigation Devices; Section 79.110 Complaint Procedures for User Interfaces, Menus and Guides, and Activating Accessibility Features on Digital Apparatus and Navigation Devices.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not for profit institutions; State, Local or Tribal government.

Number of Respondents and Responses: 4,175 respondents and 516,982 responses.

Estimated Time per Response: 0.0167 hours to 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g).

Total Annual Burden: 24,043 hours.

Annual Cost Burden: $70,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the

FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Act Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: The Commission will use the information submitted by a digital apparatus manufacturer or other party to determine whether it is achievable for digital apparatus to be fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired or whether it is achievable to comply with the information, documentation, and training requirements. The Commission will use the information submitted by an Multichannel Video Programming Distributor (MVPD) or navigation device manufacturer or other party to determine whether it is achievable for on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming to be audibly accessible in real time upon request by individuals who are blind or visually impaired or whether it is achievable to comply with the information, documentation, and training requirements. Consumers will use the information provided by manufacturers of digital apparatus on the full functionalities of digital apparatus, such as instructions and product information, as well as information provided by manufacturers and MVPDs in accordance with the information, documentation, and training requirements, in order to have accessible information and support on how to use the device. Consumers will use the information provided by manufacturers and MVPDs notifying consumers of the availability of accessible digital apparatus and navigation devices to determine which devices accessible and whether they wish to request an accessible device. MVPDs and manufacturers of navigation devices will use the information provided by consumers who are blind or visually impaired consumers when requesting accessible navigation devices to fulfill such requests. MVPDs will use information provided by customers who are blind or visually impaired as reasonable proof of disability as a condition to providing equipment and/or services at a price that is lower than that offered to the general public. Consumers will use the contact information of covered entities to file written complaints regarding the accessibility requirements for digital apparatus and navigation devices. Finally, the Commission will use information received pursuant to the complaint procedures for violations of sections 79.107–79.109 to enforce the Commission's digital apparatus and navigation device accessibility requirements. The Commission will forward complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that the Commission determines may be involved, and it may request additional information from relevant parties.

Federal Communications Commission.

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR Sections 64.703(a), 64.709, 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,418 respondents; 11,250,150 responses.

Estimated Time per Response: 1 minute (.017 hours)—50 hours.

Frequency of Response: Annual and on-occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at 47 U.S.C. 226, Telephone Operator Services, Public Law 101–435, 104 Stat. 986, codified at 47 CFR 64.703(a) Consumer Information, 64.709 Informational Tariffs, and 64.710 Operator Services for Prison Inmate Phones.

Total Annual Burden: 205,023 hours.

Total Annual Cost: $144,000.

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 impacts(s).

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02836 Filed 2–11–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 20–03]

Earlean Edwards Dukart, Complainant v. Ocean Star International Inc., d/b/a International Van Lines, Respondent; Notice of Filing of Complaint and Assignment

Served: February 6, 2020.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Earlean Edwards Dukart, hereinafter ''Complainant'', against Ocean Star International Inc., d/b/a International Van Lines, hereinafter ''Respondent''. Complainant states that she is a U.S. Citizen that currently resides in Belize, Central America. Complainant states that Respondent has ''. . . FMC organization/license no. 021051'' and claims that Respondent ''. . . was acting as a 'common carrier' as defined in 46 U.S.C. 40102'' in relation to all its allegations. Complainant states that Respondent is a party to a ''. . . Service Agreement for the international shipment of goods, Service Contract No. IN4005736.''

Complainant sought transportation services from Respondent for a move of household goods from Colorado to Belize. Complainant alleges that Respondent ''. . . willingly and intentionally, altered the terms of the Service Agreement.'' Complainant alleges that Respondent ''. . . extorted Complainant into paying invalid invoices with inaccurate fees and charges that were disputed by the Complainant.'' Complainant also alleges that Respondent ''. . . unlawfully submitted fraudulent documents.''

Complainant alleges her household goods have not been released to her or delivered.

Complainant alleges that Respondent violated ''46 U.S.C. 41102(a)(b)(c)'', ''41103(a)(1)'', ''41104(1)(2)(3)(4)(8)(10)'', and ''41105(1)(2)(4)''. Complainant seeks reparations in the amount of $256,241 and other relief. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/20-03/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by February 8, 2021, and the final decision of the Commission shall be issued by August 23, 2021.

Rachel Dickon,

Secretary.

[FR Doc. 2020–02784 Filed 2–11–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreements 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 agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are 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.: 011284–080.

Agreement Name: Ocean Carrier Equipment Management Association.

Parties: American President Lines, LLC; APL Co. Pte. Ltd.; CMA CGM S.A.; COSCO Shipping Co., Ltd.; Evergreen Line Joint Service Agreement; Hamburg Sud; Hapag-Lloyd AG; Hapag-Lloyd USA, LLC; Hyundai Merchant Marine Co., Ltd.; MSC Mediterranean Shipping Company S.A.; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; Wan Hai Lines Ltd.; Zim Integrated Shipping Services Ltd.; and Maersk A/S.

Filing Party: Jeffrey Lawrence and Donald Kasilke; Cozen O'Connor.

Synopsis: The amendment revises the affiliations of certain existing members; specifically, COSCO SHIPPING Lines, Co., Ltd. and Orient Overseas Container Line Limited shall be treated as one party for all purposes under the Agreement. In addition, the amendment updates the names of Maersk A/S and MSC Mediterranean Shipping Company S.A.

Proposed Effective Date: 1/31/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1560.

Dated: February 7, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–02789 Filed 2–11–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington, DC 20551–0001, not later than March 3, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Citizens Bancorporation of New Ulm, Inc., New Ulm, Minnesota;* to acquire Farmers State Agency of Watkins, Inc., Watkins, Minnesota, and thereby engage in insurance agency activity through a lending office located in a place that has a population not exceeding 5,000 pursuant to 12 CFR 225.28(b)(11)(iii)(A).

Board of Governors of the Federal Reserve System, February 7, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–02795 Filed 2–11–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, 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)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 12, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *First State Holding Co., Lincoln, Nebraska;* to acquire voting shares of Schneider Bancorporation and thereby, indirectly acquire shares of Plattsmouth State Bank, both of Plattsmouth, Nebraska.

Board of Governors of the Federal Reserve System, February 6, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–02762 Filed 2–11–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 182 3180]

LendEDU; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

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 March 13, 2020.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''LendEDU; File No. 182 3180'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Thomas Widor (202–326–3039), Bureau of Consumer Protection, Federal Trade Commission, 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 website (for February 3, 2020), at this web address: *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 March 13, 2020. Write ''LendEDU; File No. 182 3180'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''LendEDU; File No. 182 3180'' 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 website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 13, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Shop Tutors Inc., d/b/a LendEDU (''LendEDU'' or ''the Company''); its co-founder and Chief Executive Officer, Nathaniel Matherson; its co-founder and Chief Technology Officer, Matthew Lenhard; and the Vice President of Product, Alexander Coleman (collectively, ''Proposed Respondents'').

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 and take appropriate action or make final the agreement's proposed order.

Since 2014, Respondents have operated the website *www.lendedu.com,*

which they promote as a resource for consumers in search of financial products such as loans and insurance. In numerous instances, Respondents have described the content on the website, including their rate tables, star ratings, and rankings of the companies offering these financial products, as ''objective,'' ''honest,'' ''accurate,'' and ''unbiased.'' Contrary to their claims, Respondents have provided financial services companies with higher numerical rankings or star ratings and higher positions on rate tables based on compensation. Respondents also have added or removed companies from their content based on compensation.

In addition, Respondents have touted positive consumer reviews about their company and website that, in fact, were written by LendEDU employees or their friends, family members, and associates. Of 126 reviews of LendEDU on the third-party review platform Trustpilot, 90% were written or made up by LendEDU employees or their family, friends, or other associates. Respondents also have reposted and touted the Trustpilot reviews on LendEDU's website, as well as fake reviews written by LendEDU employees who purport to be, but are not, actual users.

The proposed order will prevent Proposed Respondents from engaging in similar acts or practices. Part I would prohibit Proposed Respondents from making the challenged and related misrepresentations. Part II would require Proposed Respondents to disclose the influence of compensation on representations made on its website and to disclose material connections among the Proposed Respondents and the various parties represented on the website. Part III would require Proposed Respondents, jointly and severally, to pay to the Commission $350,000 within 8 days of the effective date of the Order.

Part IV sets out additional requirements related to the monetary relief. Part V requires Proposed Respondents to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Part VI is an order distribution provision that requires Proposed Respondents to provide the order to current and future principals, officers, directors, and LLC managers and members, as well as current and future managers, agents and representatives who participate in certain duties related to the subject matter of the proposed complaint and order, and to secure statements acknowledging receipt of the order. Part VII requires Proposed Respondents to submit a compliance report one year after the order is entered. It also requires Proposed Respondents to notify the Commission of corporate changes that may affect compliance obligations within 14 days of such a change.

Part VIII requires Proposed Respondents to maintain and upon request make available certain compliance-related records, including accounting records and unique websites. Part IX requires Proposed Respondents to submit additional compliance reports within 10 business days of a written request by the Commission. Part X is a provision ''sunsetting'' 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 complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–02798 Filed 2–11–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0255]

Patient-Focused Drug Development for Vitiligo; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Patient-Focused Drug Development for Vitiligo.'' The purpose of the public meeting is to allow FDA to obtain patient perspectives on the impact of vitiligo on daily life, patient views on treatment approaches, and decision factors considered when selecting a treatment.

DATES: The public meeting will be held on March 30, 2020, from 1 p.m. to 5 p.m. Submit either electronic or written comments on this public meeting by June 1, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 1, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 1, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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–2020–N–0255 for ''Patient-Focused Drug Development on Vitiligo; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), 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.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT:

Shannon Cole, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6306, Silver Spring, MD 20993–0002, 301–796–9208, *PatientFocused@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This meeting will provide FDA the opportunity to obtain patient and patient representative input on the aspects of vitiligo that matter most to patients, including how it affects daily life, and on current approaches to treating vitiligo. Vitiligo is an autoimmune disease that causes the loss of skin color. The loss of color can affect skin, hair, and other areas of the body. The area affected by color loss can range in individual patients from small discrete areas to near total involvement. Although there is no cure or FDA-approved treatment for repigmentation, there are available therapies, such as prescription medications or non-drug therapies, which may often be used to manage aspects of vitiligo. FDA is interested in patients' (including adult and pediatric patients) perspectives on: (1) The impact of their vitiligo; (2) treatment approaches; and (3) decision factors considered when selecting a treatment.

The questions that will be asked of patients and patient representatives at the meeting are listed in the following section and organized by topic. For each topic, a brief initial patient panel discussion will begin the dialogue. This discussion will be followed by a facilitated discussion inviting comments from other patients and patient representatives. In addition to input generated through this public meeting, FDA is interested in receiving patient and patient representative input addressing these questions through written comments, which can be submitted to the public docket (see **ADDRESSES**). When submitting comments, if you are commenting on behalf of a patient, please indicate that you are doing so and answer the following questions as much as possible from the patient's perspective.

FDA will post the agenda and other meeting materials approximately 5 days before the meeting at: *https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-patient-focused-drug-development-vitiligo-03302020-03302020.*

II. Topics for Discussion at the Public Meeting

Topic 1: Health Effects and Daily Impacts That Matter Most to Patients

1. Which aspects of vitiligo have the most significant impact on your life? (Examples may include depigmentation, itching, sensitivity to sunlight, etc.)

2. Are there specific activities that are important to you but that you cannot do at all or as fully as you would like because of your vitiligo? (Examples of activities may include participating in social events, playing sports, being outside in the sunlight, etc.)

How does your vitiligo and its impacts affect your daily life on the best days? On the worst days?

3. How has your vitiligo changed over time?

a. How has your vitiligo changed from childhood to adulthood (such as vitiligo severity, disease acceptance)?

b. Would you define your vitiligo today as being well-managed?

4. What worries you most about your vitiligo?

Is there a particular body area affected by vitiligo (such as face, hands, limbs) that is of most concern to you?

Topic 2: Patients' Perspectives on Current Approaches to Treatment

1. What are you currently doing to help treat your vitiligo? (Examples may include prescription medicines, over-the-counter products, and other therapies, including non-drug therapies such as diet modification.)

How has your treatment regimen changed over time, and why?

2. How well does your current treatment regimen treat the most significant aspects of your vitiligo? For example, how well do your treatments improve your ability to do specific activities?

3. What are the most significant downsides to your current treatments, and how do they affect your daily life? (Examples of downsides may include bothersome side effects, depigmentation of affected area is more noticeable, hospital treatments, etc.)

4. Assuming there is no complete cure for your vitiligo, what specific things would you look for in an ideal treatment for your vitiligo?

Is there a particular body area affected by vitiligo (such as face, hands, limbs) that you would prioritize for treatment?

5. What factors do you consider when making decisions about selecting a course of treatment?

III. Participating in the Public Meeting

Registration: To register for the public meeting, visit *https://vitiligo-pfdd.eventbrite.com.* Please register by March 23, 2020. Persons without access to the internet can call 301–796–9208 to register. If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the webcast. Please

provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by March 23, 2020, 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 12 p.m.

If you need special accommodations due to a disability, please contact Shannon Cole (see **FOR FURTHER INFORMATION CONTACT**) no later than March 23, 2020.

Panelist Selection: Patients or patient representatives who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. These patients or patient representatives also will be asked to send *PatientFocused@fda.hhs.gov* a brief summary of responses to the topic questions by March 9, 2020. Panelists will be notified of their selection approximately 7 days before the public meeting. We will try to accommodate all patients and patient stakeholders who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Open Public Comment: There will be time allotted during the meeting for open public comment. Signup for this session will be on a first-come, first-served basis on the day of the meeting. Individuals and organizations with common interests are urged to consolidate or coordinate and request time for a joint presentation. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Persons attending FDA's meetings are advised that FDA is not responsible for providing access to electrical outlets.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. Please register for the webcast by visiting *https://vitiligo_pfdd.eventbrite.com.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-patient-focused-drug-development-vitiligo-03302020-03302020.*

Dated: February 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02767 Filed 2–11–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Alzheimer's Clinical Trials.
Date: March 10, 2020.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6830, *unja.hayes@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR Small Business: Computational, Modeling, and Biodata Management.
Date: March 11, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology Lifespan Development, STEM Education.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.
Contact Person: Elia K. Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–827–7189, *femiaee@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.
Contact Person: Leonid V. Tsap, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assay, Diagnostics and Animal Model Development.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Washington, DC Downtown, 1199 Vermont Ave. NW, Washington, DC 20005.
Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35).
Date: March 12, 2020.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, Metro Center, 1, Bethesda, MD 20814.
Contact Person: Baishali Maskeri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2022, Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5902, *caojn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental and Occupational Safety.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.
Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 6188, MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cardiovascular and Surgical Devices.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.
Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, *Jan.Li@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: February 6, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02753 Filed 2–11–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Systemic Injury by Environmental Exposure, February 20, 2020, 8:00 a.m. to February 21, 2020, 5:00 p.m. at the Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314 which was published in the **Federal Register** on January 28, 2020, 85 FR 5000.

The Contact Person for this meeting has been changed to Ganesan Ramesh, Ph.D., Scientific Review Officer, Telephone: (301) 827–5467, Email: *Ganesan.ramesh@nih.gov.* The meeting date and time remain the same. The meeting is closed to the public.

Dated: February 6, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02754 Filed 2–11–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA OD19–021: Maximizing the Scientific Value of Existing Biospecimen Collections: Scientific Opportunities for Exploratory Research.
Date: February 26, 2020.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: National Cryo-ET Centers.
Date: March 10, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM–19–011: Pilot Projects Investigating Understudied G Protein-Coupled Receptors, Ion Channels, and Protein Kinases (R03 Clinical Trial Not Allowed).
Date: March 10–11, 2020.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Bioengineering Research Partnerships (U01).
Date: March 11, 2020.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Investigations on Primary Immunodeficiency Diseases/Inborn Errors of Immunity.
Date: March 11, 2020.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, RKL II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–19–006: NIH Director's New Innovator Award Review (DP2).
Date: March 12–13, 2020.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.
Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, 301–435–1787, *srikanth.ranganathan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Social Epigenomics.
Date: March 12, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.
Contact Person: Andrew Louden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20817, 301–435–1985, *loudenan@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35).
Date: March 12–13, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Emily Foley, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3016, *emily.foley@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–358: Molecular and Cellular Causal Aspects of Alzheimer's Disease.
Date: March 12, 2020.
Time: 10:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–203, PAR 17–204: Inter-Organelle Communication in Cancer (R01 and R21).
Date: March 12, 2020.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda 20892, 301–402–4179, *thomas.cho@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–333: Understanding the Early Development of the Immune System.
Date: March 13, 2020.
Time: 12:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02752 Filed 2–11–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review D SEP.
Date: March 9–11, 2020.
Time: 06:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Commonwealth, 500 Commonwealth Avenue, Boston, MA 02215.
Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 496–8775, *hayesj@nih.gov*.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review B SEP.
Date: March 15–17, 2020.
Time: 06:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Redwood City San Carlos, 800 East San Carlos Avenue, San Carlos, CA 94070.
Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: February 6, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02751 Filed 2–11–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0915]

National Navigation Safety Advisory Committee; Initial Solicitation for Members

AGENCY: Coast Guard, Department of Homeland Security

ACTION: Request for applications.

SUMMARY: The Coast Guard is requesting applications from persons interested in membership on National Navigation Safety Advisory Committee. This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment, routing measures, marine information, and aids to navigation systems. Please read this notice for a description of the Committee positions we are seeking to fill.

DATES: Your completed applications should reach the Coast Guard on or before April 13, 2020.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the National Navigation Safety Advisory Committee and a resume detailing the applicant's experience. We will not accept biography. Applications should be submitted via one of the following methods:

- *By Email: George.H.Detweiler@uscg.mil* (preferred), Subject line: The National Navigation Safety Advisory Committee;
- *By Fax:* 202–372–1991 ATTN: Mr. George Detweiler, Alternate Designated Federal Officer; or
- *By Mail:* Commandant (CG–NAV–2)/NAVSAC Attn: Mr. George Detweiler,

Alternate Designated Federal Officer, Commandant (CG–NAV–2), U.S. Coast Guard 2703 Martin Luther King Avenue SE, STOP 7418, Washington, DC 20593–7418.

FOR FURTHER INFORMATION CONTACT: Mr. George Detweiler, Alternate Designated Federal Officer of the National Navigation Safety Advisory Committee; 202–372–1566; or email at *George.H.Detweiler@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Navigation Safety Advisory Committee is a federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 United States Code, Appendix. and 46 U.S.C. 15107 and 15109. The Committee was established on December 4, 2018, by the *Frank LoBiondo Coast Guard Authorization Act of 2018,* which added section 15107, National Navigation Safety Advisory Committee, to Title 46 of the U.S. Code (46 U.S.C. 15107). The purpose of the Committee is to advise the Secretary of Homeland Security on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment, routing measures, marine information, and aids to navigation systems.

In accordance with 46 U.S.C. 15109(a), the Committee is required to hold meetings at least once a year. We expect the Committee to meet at least twice a year, but it may meet even more frequently. All members will serve at their own expense and receive no salary or other compensation from the Federal Government. The only compensation the members may receive is for travel expenses, including per diem in lieu of subsistence, and/or actual and reasonable expenses incurred in the performance of their direct duties at the Committee.

Under 46 U.S.C. 15109(f)(6), membership terms expire on December 31 of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4). In this initial solicitation for Committee members, we will consider applications for 21 positions in the following membership categories:

a. Commercial vessel owners or operators
b. Professional mariners
c. Recreational boaters
d. The recreational boating industry
e. State agencies responsible for vessel or port safety
f. The Maritime Law Association

Each member will be appointed to represent the viewpoints and interests of one of the groups or organizations, and at least one member will be appointed to represent each membership category. All members serve as representatives and are not Special Government Employees as defined in 18, U.S.C., Section 202(a). Each member of the Committee must have particular expertise, knowledge, and experience in matters relating to the function of the Committee which is to advise the Secretary of Homeland Security on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

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). Registered lobbyists are ''lobbyists,'' 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 of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any 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 Committee, send your cover letter and resume to Mr. George Detweiler, Alternate Designated Federal Officer of the National Navigation Safety Advisory Committee, via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: January 31, 2020.

Michael D. Emerson,

Director, Marine Transportation Systems.

[FR Doc. 2020–02761 Filed 2–11–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–02]

60-Day Notice of Proposed Information Collection: Management Certification & Entity Profile

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 13, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of

available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Management Certification & Entity Profile.

OMB Approval Number: 2502–0305.

OMB Expiration Date: 4/30/2020.

Type of Request: Extension of currently approved collection.

Form Number: HUD–9832 Management Entity Profile; HUD–9839-a Project Owner's Certification for Owner-Managed Multifamily Housing Projects; HUD–9839-b Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents; HUD–9839-c Project Owner's/Borrower's Certification for Elderly Housing Projects Managed by Administrators.

Description of the need for the information and proposed use: Owners of HUD-held, -insured, or subsidized multifamily housing projects must provide information for HUD's oversight of management agents/entities.

Respondents (*i.e. affected public*): Property owners; project managers.

Estimated Number of Respondents: 61,240.

Estimated Number of Responses: 3,062.

Frequency of Response: 1.

Average Hours per Response: Varies

Total Estimated Burden: 3,540.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 23, 2020.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2020–02824 Filed 2–11–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2019–0046]

Gulf of Mexico Outer Continental Shelf Region-Wide Oil and Gas Lease Sale 254

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, March 18, 2020, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region-wide Oil and Gas Lease Sale 254 (GOM Region-wide Sale 254), in accordance with the provisions of the Outer Continental Shelf Lands Act, as amended, and the implementing regulations issued pursuant thereto. The GOM Region-wide Sale 254 Final Notice of Sale (NOS) package contains information essential to potential bidders, and consists of the NOS, information to lessees, and lease stipulations.

DATES: BOEM will hold GOM Region-wide Sale 254 at 9:00 a.m. on Wednesday, March 18, 2020. All times referred to in this document are Central time, unless otherwise specified.

Bid submission deadline: BOEM must receive all sealed bids between 8:00 a.m. and 4:00 p.m. on normal working days prior to the sale, or from 8:00 a.m. until the bid submission deadline of 10:00 a.m. on Tuesday, March 17, 2020, the day before the lease sale. For more information on bid submission, see Section VII, ''Bidding Instructions.''

ADDRESSES: Bids will be accepted prior to the bid submission deadline at 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. Public bid reading for GOM Region-wide Sale 254 will be held at 1201 Elmwood Park Boulevard, New Orleans, Louisiana, but the venue will not be open to the general public, media, or industry during bid opening or reading. Bid opening will be available for public viewing on BOEM's website at *www.boem.gov/Sale-254* via live-streaming video beginning at 9:00 a.m. on the date of the sale. The results will be posted on BOEM's website upon completion of bid opening and reading. Interested parties can download the Final NOS package from BOEM's website at *http://www.boem.gov/Sale-254/.* Copies of the sale maps can be obtained by contacting the BOEM GOM Region: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF.

FOR FURTHER INFORMATION CONTACT: Susan Erin O'Reilly Vaughan, Chief, Leasing and Financial Responsibility, Office of Leasing and Plans, 504–736–1759, *erin.o'reilly@boem.gov* or Wright Jay Frank, Chief, Leasing Policy and Management Division, 703–787–1325, *wright.frank@boem.gov.*

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I. Lease Sale Area

Blocks Offered for Leasing: BOEM will offer for bid in this lease sale all of the available unleased acreage in the GOM, except those blocks listed below in ''Blocks Not Offered for Leasing.''

Blocks Not Offered for Leasing: The following whole and partial blocks are not offered for lease in this sale. Official Protraction Diagrams (OPDs) and Supplemental Official Block Diagrams are available online at *https://www.boem.gov/Maps-and-GIS-Data/.*

- *Flower Garden Banks National Marine Sanctuary (East and West Flower Garden Banks and Stetson Bank):*

Area	OCS block
High Island, East Addition, South Extension (Leasing Map TX7C).	Whole Block: A–398. Partial Blocks: A–366, A–367, A–374, A–375, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401.
High Island, South Addition (Leasing Map TX7B).	Partial Blocks: A–502, A–513.
Garden Banks (OPD NG 15–02)	Partial Blocks: 134, 135.

• *Blocks that are adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:*

Area	OCS block
Lund South (OPD NG 16–07)	Whole Blocks: 128, 129, 169 through 173, 208 through 217, 248 through 261, 293 through 305, and 349.
Henderson (OPD NG 16–05)	Whole Blocks: 466, 508 through 510, 551 through 554, 594 through 599, 637 through 643, 679 through 687, 722 through 731, 764 through 775, 807 through 819, 849 through 862, 891 through 905, 933 through 949, and 975 through 992. Partial Blocks: 335, 379, 423, 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, and 994.
Florida Plain (OPD NG 16–08)	Whole Blocks: 5 through 24, 46 through 67, 89 through 110, 133 through 154, 177 through 197, 221 through 240, 265 through 283, 309 through 327, and 363 through 370.

• *All whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006, Public Law 109–432:*

Area	OCS block
Pensacola (OPD NH 16–05)	Whole Blocks: 751 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, and 969 through 975.
Destin Dome (OPD NH 16–08)	Whole Blocks: 1 through 7, 45 through 51, 89 through 96, 133 through 140, 177 through 184, 221 through 228, 265 through 273, 309 through 317, 353 through 361, 397 through 405, 441 through 450, 485 through 494, 529 through 538, 573 through 582, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 804, 837 through 848, 881 through 892, 925 through 936, and 969 through 981.
DeSoto Canyon (OPD NH 16–11)	Whole Blocks: 1 through 15, 45 through 59, and 92 through 102. Partial Blocks: 16, 60, 61, 89 through 91, 103 through 105, and 135 through 147.
Henderson (OPD NG 16–05)	Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, and 423.

• *Depth-restricted, segregated block portion(s):*

Block 299, Main Pass Area, South and East Addition (as shown on Louisiana Leasing Map LA10A), containing 1,125 acres, from the surface of the earth down to a subsea depth of 1,900 feet with respect to the following described portions: SW¼NE¼; NW¼SE¼NE¼; W½NE¼SE¼NE¼; S½S½NW¼NE¼; S½SW¼NE¼NE¼; S½SW¼SE¼NE¼NE¼; N½SW¼SE¼NE¼; SW¼SW¼SE¼NE¼; NW¼SE¼SE¼ NE¼; N½NW¼SW¼SE¼SE¼NE¼; N½SE¼SW¼SE¼NE¼; N½S½SE¼SW¼SE¼NE¼; S½NE¼NW¼; S½S½N½NE¼NW¼; N½SE¼NW¼;S½SE¼NW¼NW¼; NE¼SE¼ NW¼NW¼; E½NE¼SW¼NW¼; N½SE¼SE¼NW¼; NE¼SW¼SE¼NW¼; N½NW¼SW¼SE¼NW¼; SE¼SE¼SE¼NW¼; E½SW¼SE¼SE¼NW¼; N½NW¼NE¼SW¼NW¼; N½S½NW¼NE¼SW¼NW¼; N½N½NE¼NE¼NE¼SW¼; N½N½N½NW¼NW¼SE¼; N½N½NW¼NE¼NW¼SE¼.

• *The following whole or partial blocks, whose lease status is currently under appeal:*

Area	OCS block
Keathley Canyon (OPD NG15–05)	246, 247, 290, 291, 292, 335, 336.
Vermillion Area (Leasing Map LA3)	Partial Block 179.
Atwater Valley (OPD NG16–01)	63.

• *Whole or partial blocks that have received bids in previous sales, where the bidder has sought reconsideration of BOEM's rejection of the bid, are not offered in this sale, unless the reconsideration request is fully resolved at least 30 days prior to publication of this Final NOS.*

The list of blocks available can be found under the Sale 254 link at *https://www.boem.gov/Sale-254* under the Final NOS tab.

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, 43 U.S.C. 1331–1356, as amended, and is subject to OCSLA-implementing regulations promulgated pursuant thereto in 30 CFR part 556, and other applicable statutes and

regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is also subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (February 2017) to convey leases resulting from this sale. This lease form can be viewed on BOEM's website at *http://www.boem.gov/BOEM-2005.*

The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Primary Term

Primary Terms are summarized in the following table:

Water depth (meters)	Primary term
0 to <400	The primary term is five years; the lessee may earn an additional three years (*i.e.,* for an eight-year extended primary term) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVDSS) during the first five years of the lease.
400 to <800	The primary term is five years; the lessee will earn an additional three years (*i.e.,* for an eight-year extended primary term) if a well is spudded during the first five years of the lease.
800 to <1,600	The primary term is seven years; the lessee will earn an additional three years (*i.e.,* for a 10-year extended primary term) if a well is spudded during the first seven years of the lease.
1,600+	10 years.

(1) The primary term for a lease in water depths less than 400 meters issued as a result of this sale is five years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVDSS within the first five years of the lease, then the lessee may earn an additional three years, resulting in an eight-year primary term. The lessee will earn the eight-year primary term when the well is drilled to a target below 25,000 feet TVDSS, or the lessee may earn the eight-year primary term in cases where the well targets, but does not reach a depth below 25,000 feet TVDSS due to mechanical or safety reasons, and where the lessee provides sufficient evidence that it did not reach that target for reasons beyond the lessee's control. To earn the eight-year extended primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after completion of the drilling operation, providing the well number, spud date, information demonstrating a target below 25,000 feet TVDSS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVDSS. This letter must request confirmation that the lessee earned the eight-year primary term. The BOEM GOM Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee's letter, whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

A lessee that has earned the eight-year primary term by spudding a well with a hydrocarbon target below 25,000 feet TVDSS during the standard five-year primary term of the lease will not be granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The primary term for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is five years. If the lessee spuds a well within the five-year primary term of the lease, the lessee will earn an additional three years, resulting in an eight-year primary term.

To earn the eight-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after spudding a well, providing the well number and spud date, and requesting confirmation that the lessee has earned the eight-year extended primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(3) The primary term for a lease in water depths ranging from 800 to less than 1,600 meters issued as a result of this sale is seven years. If the lessee spuds a well within the seven-year primary term, the lessee will earn an additional three years, resulting in a ten-year extended primary term.

To earn the 10-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after spudding a well, providing the well number and spud date, and requesting confirmation that the lessee has earned the 10-year primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(4) The primary term for a lease in water depths 1,600 meters or deeper issued as a result of this sale will be 10 years.

Economic Conditions

Minimum Bonus Bid Amounts

BOEM will not accept a bonus bid unless it provides for a cash bonus in an amount equal to, or exceeding, the specified minimum bid, as described below.

- $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters; and
- $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6, 7, & 8+
0 to <200	$7.00	$14.00, $21.00, & $28.00.
200 to <400	11.00	$22.00, $33.00, & $44.00.
400+	11.00	$16.00.

Escalating Rental Rates for Leases With an Eight-Year Primary Term in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an eight-year primary term will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate, if another well is spudded targeting hydrocarbons below 25,000 feet TVDSS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 12.5 percent for leases situated in water depths less than 200 meters; and
- 18.75 percent for leases situated in water depths of 200 meters and deeper.

Minimum Royalty Rate

- $7.00 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- $11.00 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper.

Royalty Suspension Provisions

The issuance of leases with Royalty Suspension Volumes (RSVs) or other forms of royalty relief is authorized under existing BOEM regulations at 30 CFR part 560. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are codified in Bureau of Safety and Environmental Enforcement (BSEE) regulations at 30 CFR part 203. In this sale, the only royalty relief program being offered that involves the provision of RSVs relates to the drilling of ultra-deep wells in water depths of less than 400 meters, as described in the following section.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Pursuant to 30 CFR part 203, regulations implementing the requirements of the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 594 (2005)), certain leases issued as a result of this sale may be eligible for RSV incentives on gas produced from ultra-deep wells. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVDSS or deeper receive an RSV of 35 billion cubic feet on the production of natural gas. This RSV incentive is subject to applicable price thresholds set forth in the regulations at 30 CFR part 203.

IV. Lease Stipulations

Consistent with the Record of Decision for the Final Programmatic Environmental Impact Statement for the 2017–2022 Five Year OCS Oil and Gas Leasing Program, Stipulation No. 5 (Topographic Features) and Stipulation No. 8 (Live Bottom) apply to every lease sale in the GOM Program Area. One or more of the remaining eight stipulations may be applied to leases issued as a result of this sale, on applicable blocks as identified on the map ''Gulf of Mexico Region-wide Oil and Gas Lease Sale 254, March 18, 2020, Stipulations and Deferred Blocks'' included in the Final NOS package. The full text of the following stipulations is contained in the ''Lease Stipulations'' section of the Final NOS package.

(1) Military Areas
(2) Evacuation
(3) Coordination
(4) Protected Species
(5) Topographic Features
(6) United Nations Convention on the Law of the Sea Royalty Payment
(7) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico
(8) Live Bottom
(9) Blocks South of Baldwin County, Alabama
(10) Restrictions due to Rights-of-Use and Easement for Floating Production Facilities

V. Information to Lessees

Information to Lessees (ITLs) provide detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITLs for this sale is contained in the ''Information to Lessees'' section of the Final NOS package and covers the following topics:

(1) Navigation Safety
(2) Ordnance Disposal Areas
(3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
(4) Lightering Zones
(5) Indicated Hydrocarbons List
(6) Military Areas
(7) Bureau of Safety and Environmental Enforcement Inspection and Enforcement of Certain U.S. Coast Guard Regulations
(8) Significant Outer Continental Shelf Sediment Resource Areas
(9) Notice of Arrival on the Outer Continental Shelf
(10) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(11) Protected Species
(12) Proposed Expansion of the Flower Garden Banks National Marine Sanctuary
(13) Communication Towers
(14) Deepwater Port Applications for Offshore Oil and Liquefied Natural Gas Facilities
(15) Ocean Dredged Material Disposal Sites
(16) Rights-of-Use and Easement
(17) Industrial Waste Disposal Areas
(18) Gulf Islands National Seashore
(19) Air Quality Permit/Plan Approvals

VI. Maps

The maps pertaining to this lease sale can be viewed on BOEM's website at *http://www.boem.gov/Sale-254/*. The following maps are also included in the Final NOS package:

Lease Terms and Economic Conditions Map

The lease terms and economic conditions associated with leases of certain blocks are shown on the map entitled ''Gulf of Mexico Region-wide Oil and Gas Lease Sale 254, March 18, 2020, Lease Terms and Economic Conditions.''

Stipulations and Deferred Blocks Map

The lease stipulations and the blocks to which they apply are shown on the map entitled ''Gulf of Mexico Region-wide Oil and Gas Lease Sale 254, March 18, 2020, Stipulations and Deferred Blocks Map.''

VII. Bidding Instructions

Bids may be submitted in person or by mail at the address below in the ''Mailed Bids'' section. Prior to bid submittal, bidders submitting their bid(s) in person are advised to email *boemgomrleasesales@boem.gov* to provide the names of the company representative(s) submitting the bid(s). Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and the information to be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- Typed name and title, and signature of each bidder's authorized officer;
- Each bidder's qualification number;
- Map name and number or OPD name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including the requirement to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon and make payment of the balance of the bonus bid and first year's rental upon BOEM's acceptance of the bid as the high bid.

The information required for each bid is specified in the document ''Bid Form'' that is available in the Final NOS package, which can be found at *http://www.boem.gov/Sale-254/.* A blank bid form is provided in the Final NOS package for convenience and can be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for GOM Region-wide Sale 254, not to be opened until 9 a.m. Wednesday, March 18, 2020:''
- Map name and number or OPD name and number;
- Block number for block bid upon; and
- The exact name and qualification number of the submitting bidder only. The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows:

Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard WS–266A, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for GOM Region-wide Sale 254. Please Deliver to Mrs. Bridgette Duplantis or Mr. Greg Purvis, 2nd Floor, Immediately.

Please Note: Bidders mailing bid(s) are advised to inform BOEM by email at *boemgomrleasesales@boem.gov* immediately after placing bid(s) in the mail. This provides advance notice to BOEM regarding pending bids prior to the bid submission deadline. However, if BOEM receives bids later than the bid submission deadline, the BOEM GOM Regional Director will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently OCS oil and gas lease record title holders, or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend an area-wide development bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time of bid submittal, a confirmation or tracking number for an EFT payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted so BOEM can confirm payment with the Office of Natural Resources Revenue (ONRR). Submitting payment to the bidders' financial institution at least five business days prior to bid submittal helps ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have the needed time to screen and process payments so they are posted to ONRR prior to placing the bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Bids will not be accepted if BOEM cannot confirm payment with ONRR. For more information on EFT procedures, see Section X of this document entitled, ''The Lease Sale.''

If providing a third-party guarantee, amending an area-wide development bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, bidders are urged to file the same documents with BOEM, well in advance of submitting the bid, to allow processing time and for bidders to take any necessary curative actions prior to bid submission.

Affirmative Action

Prior to bidding, each bidder should file the Equal Opportunity Affirmative Action Representation Form BOEM–2032 (October 2011, available on BOEM's website at *http://www.boem.gov/BOEM-2032/*) and each bidder must file the Equal Opportunity Compliance Report Certification Form BOEM–2033 (October 2011, available on BOEM's website at *http://www.boem.gov/BOEM-2033/*) with the BOEM GOM Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by Executive Order 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) A ''Statement'' page that includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid upon that did not use proprietary data;

(2) A ''Table'' listing the required data about each proprietary survey used (see below); and

(3) ''Maps,'' which contain the live trace maps for each proprietary survey that is identified in the GDIS statement and table.

Every bidder submitting a bid on a block in GOM Region-wide Sale 254 or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The bidder or bidders must submit the GDIS in a separate sealed envelope, and must identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO) data, Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder(s) must also include a live trace map (*e.g.,* .pdf and ArcGIS shapefile) for each proprietary survey identified in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). The shape file must not include cultural resources information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address for a contact person and an alternate, who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement also must include a list of all blocks bid upon that did not use proprietary or reprocessed pre or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. *Bidders must submit the GDIS statement even if no proprietary geophysical data and information were used in bid preparation for the block.*

An example of the preferred format of the table is included in the Final NOS package, and a blank digital version of the preferred table can be accessed on the GOM Region-wide Sale 254 web page at *http://www.boem.gov/Sale-254.* The GDIS table should have columns that clearly state the following:

- The sale number;
- The bidder company's name;
- The joint bidder's company's name (if applicable);
- The company providing Proprietary Data to BOEM;
- The block area and block number bid upon;
- The owner of the original data set (*i.e.,* who initially acquired the data);
- The industry's original name of the survey (*e.g.,* E Octopus);
- The BOEM permit number for the survey;
- Whether the data set is a fast-track version;
- Whether the data is speculative or proprietary;
- The data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; time or depth);
- The migration algorithm (*e.g.,* Kirchhoff migration, wave equation migration, reverse migration, reverse time migration) of the data and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D);
- The live proprietary survey coverage (2–D miles; 3–D blocks);
- The computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block;
- Who reprocessed the data;
- Date the final reprocessing was completed (month and year);
- If data were previously sent to BOEM, list the sale number and date of the sale for which it was used;
- Whether proprietary or speculative AVO/AVA (PROP/SPEC) was used;
- Date AVO or AVA was sent to BOEM if sent prior to the sale;
- Whether AVO/AVA is time or depth (PSTM or PSDM);
- Which angled stacks were used (*e.g.,* NEAR, MID, FAR, ULTRAFAR);
- Whether the company used Gathers to evaluate the block in question; and
- Whether the company used Vector Offset Output (VOO) or Vector Image Partitions (VIP) to evaluate the block in question.

BOEM will use the computer storage size information to estimate the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 551.13.

BOEM reserves the right to inquire about alternate data sets, to perform quality checks, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. See the ''Example of Preferred Format'' that is included in the Final NOS package.

The GDIS maps are live trace maps (*e.g.,* .pdf and ArcGIS shapefiles) that bidders should submit for each proprietary survey identified in the GDIS table. The maps should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). As previously stated, the shapefile must not include cultural resources information, only the live trace map of the survey itself.

Pursuant to 30 CFR 551.12 and 30 CFR 556.501, as a condition of the sale, the BOEM GOM Regional Director (RD) requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data should not be submitted to BOEM unless specifically requested by BOEM. The BOEM GOM RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Where the BOEM GOM RD has notified bidders and joint bidders that the request for such proprietary data has been withdrawn, reimbursement will not be provided. Pursuant to 30 CFR part 551 and 30 CFR 556.501, as a condition of this sale, all bidders that are required to submit data must ensure that the data are received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday.

The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, Louisiana 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: ''Proprietary Geophysical Data Submitted Pursuant to GOM Region-wide Sale 254 and used during <Bidder Name's> evaluation of Block <Block Number>.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM user account is needed to register or update

an entity's records. The website for registering is *gsa.gov/iaesystems.*

(2) Must be enrolled in the U.S. Treasury's Invoice Processing Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When submitting a request for payment, the assigned Purchase Order Number must be included.

(3) Must have a current On-line Representations and Certifications Application at *gsa.gov/iaesystems.*

Please Note: A digital as well as a printed copy should be sent in for the GDIS Statement, Table and Maps. The GDIS Statement should be sent in as a digital PDF. The GDIS Information Table must be submitted digitally as an Excel spreadsheet. The Proprietary Maps should be sent in as PDF files and the live trace outline of each proprietary survey should also be submitted as a shapefile. Bidder may submit the digital files on a CD, DVD, or any USB external drive (formatted for Windows). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Ms. Teree Campbell at (504) 736–3231.

Bidders should refer to Section X of this document, ''The Lease Sale: Acceptance, Rejection, or Return of Bids,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submittal. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 30 CFR 556.401, 30 CFR 556.501, and 30 CFR 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On November 5, 2019, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 84 FR 59644. Potential bidders are advised to refer to the **Federal Register**, prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding regulations at 30 CFR 556.511–515.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including that requiring payment of one-fifth of the bonus bid on all apparent high bids. A statement to this effect is included on each bid form (see the document ''Bid Form'' that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the bid submission deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM GOM RD, or the RD's designee, will indicate approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks, are shown in the document ''List of Blocks Available for Leasing'' included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM rounded up to the next whole acre. The appropriate minimum rate per acre was then applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid so calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the items listed below. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified under the **DATES** and **ADDRESSES** sections of the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's website at *www.boem.gov* via live-streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount can be obtained on the BOEM website at *http://www.boem.gov/Sale-254* under the heading ''Notification of EFT ⅕ Bonus Liability'' after 1:00 p.m. on the day of the sale. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury by 1:00 p.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM website identified above.

Submitting payment to your financial institution as soon as possible the day of bid reading, but no later than 7:00 p.m. Eastern Time the day of bid reading, will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for GOM Region-wide Sale 254, following the detailed instructions contained on the ONRR Payment Information web page at *https://www.onrr.gov/ReportPay/payments.htm.* Acceptance of a deposit does not constitute, and will not be

construed as, acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS package, OCSLA, or other applicable statute or regulation will be rejected and returned to the bidder. The United States Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for GOM Region-Wide Sale 254

To ensure that the U.S. Government receives a fair return for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with its bid adequacy procedures, which are available on BOEM's website at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

Lease Award

BOEM requires each bidder awarded a lease to complete the following:

(1) Execute all copies of the lease (Form BOEM–2005 [February 2017], as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended.

ONRR requests that only one transaction be used for payment of the balance of the bonus bid amount and the first year's rental. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance of the bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM GOM RD has the discretion to change any date, time, and/or location specified in the Final NOS package in the case of an event that the BOEM GOM RD deems could interfere with a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM website at *http://www.boem.gov,* for information regarding any changes.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2020–02716 Filed 2–11–20; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2020–0001]

Gulf of Mexico, Outer Continental Shelf (OCS), Oil and Gas Lease Sale 254

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is announcing the availability of a Record of Decision for proposed Gulf of Mexico (GOM) regionwide oil and gas Lease Sale 254. This Record of Decision identifies BOEM's selected alternative for proposed Lease Sale 254, which is analyzed in the *Gulf of Mexico OCS Lease Sale: Final Supplemental Environmental Impact Statement 2018* (2018 GOM Supplemental EIS).

ADDRESSES: The Record of Decision is available on BOEM's website at *http://www.boem.gov/nepaprocess/.*

FOR FURTHER INFORMATION CONTACT: For more information on the Record of Decision, you may contact Ms. Helen Rucker, Chief, Environmental Assessment Section, Office of Environment, by telephone at 504–736–2421, or by email at *helen.rucker@boem.gov.*

SUPPLEMENTARY INFORMATION: In the 2018 GOM Supplemental EIS, BOEM evaluated five alternatives for proposed Lease Sale 254. We have summarized these alternatives below, noting some additional blocks that may be excluded due to their lease status at the time of this decision:

Alternative A—Regionwide OCS Lease Sale: This is BOEM's preferred alternative. This alternative would allow for a proposed GOM regionwide lease sale encompassing all three planning areas: Western Planning Area (WPA); Central Planning Area (CPA); and a small portion of the Eastern Planning Area (EPA) not under Congressional moratorium. Under this alternative, BOEM would offer for lease all available unleased blocks within the proposed regionwide lease sale area for oil and gas operations with the following exceptions: Whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; whole and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary; depth restricted, segregated portions of Block 299, Main Pass Area, South and East Addition (Louisiana Leasing Map LA10A); blocks where the lease status is currently under appeal; and whole or partial blocks that have received bids in previous lease sales, where the bidder has sought reconsideration of BOEM's rejection of their bid, unless the reconsideration request is fully resolved at least 30 days prior to the publication of the Final Notice of Sale. We have listed the unavailable blocks in Section I of the Final Notice of Sale for proposed Lease Sale 254 and at *www.boem.gov/Sale-254.* The proposed regionwide lease sale area encompasses about 91.93 million acres (ac). As of January 2020, approximately 78.1 million ac of the proposed regionwide lease sale area are available for lease. As described in the 2018 GOM Supplemental EIS, the estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed regionwide lease sale are between 0.211 and 1.118 billion barrels of oil (BBO) and 0.547 and 4.424 trillion cubic feet (Tcf) of natural gas.

Alternative B—Regionwide OCS Lease Sale Excluding Available Unleased Blocks in the WPA Portion of the Proposed Lease Sale Area: This alternative would offer for lease all available unleased blocks within the CPA and EPA portions of the proposed lease sale area for oil and gas operations, with the following exceptions: Whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the United States' Exclusive

Economic Zone in the area known as the northern portion of the Eastern Gap; depth restricted, segregated portions of Block 299, Main Pass Area, South and East Addition (Louisiana Leasing Map LA10A); blocks where the lease status is currently under appeal; and whole or partial blocks that have received bids in previous lease sales, where the bidder has sought reconsideration of BOEM's rejection of their bid, unless the reconsideration request is fully resolved at least 30 days prior to publication of the Final Notice of Sale. The proposed CPA/EPA lease sale area encompasses about 63.35 million ac. As of January 2020, approximately 51.5 million ac of the proposed CPA/EPA lease sale area are available for lease. The estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed lease sale under Alternative B are 0.185–0.970 BBO and 0.441–3.672 Tcf of gas.

Alternative C—Regionwide OCS Lease Sale Excluding Available Unleased Blocks in the CPA and EPA Portions of the Proposed Lease Sale Area: This alternative would offer for lease all available unleased blocks within the WPA portion of the proposed lease sale area for oil and gas operations, with the following exceptions: Whole and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary; blocks where the lease status is currently under appeal; and whole or partial blocks that have received bids in previous lease sales, where the bidder has sought reconsideration of BOEM's rejection of their bid, unless the reconsideration request is fully resolved at least 30 days prior to publication of the Final Notice of Sale. The proposed WPA lease sale area encompasses about 28.58 million ac. As of January 2020, approximately 26.7 million ac of the proposed WPA lease sale area are available for lease. The estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed lease sale under Alternative C are 0.026–0.148 BBO and 0.106–0.752 Tcf of gas.

Alternative D—Alternative A, B, or C, with the Option to Exclude Available Unleased Blocks Subject to the Topographic Features, Live Bottom (Pinnacle Trend), and/or Blocks South of Baldwin County, Alabama, Stipulations: This alternative could be combined with any of the Action alternatives above (*i.e.,* Alternative A, B, or C) and would allow the flexibility to offer leases under any alternative with additional exclusions. Under Alternative D, the decisionmaker could exclude from leasing any available unleased blocks in Alternative A subject to any one and/or a combination of the following stipulations: Topographic Features Stipulation, Live Bottom Stipulation, and Blocks South of Baldwin County, Alabama, Stipulation (not applicable to Alternative C). This alternative considered blocks subject to these stipulations because these areas have been emphasized in scoping, can be geographically defined, and adequate information exists regarding their ecological importance and sensitivity to OCS oil and gas-related activities.

A total of 207 blocks within the CPA and 160 blocks in the WPA are affected by the Topographic Features Stipulation. There are currently no identified topographic features protected under this stipulation in the EPA. The Live Bottom Stipulation covers the pinnacle trend area of the CPA, affecting a total of 74 blocks. Under Alternative D, the number of blocks that would become unavailable for lease represents only a small percentage of the total number of blocks to be offered under Alternative A, B, or C (less than 4%, even if blocks subject to all three stipulations were excluded). Therefore, Alternative D could reduce offshore infrastructure and activities in the pinnacle trend area, because Alternative D would simply shift the location of offshore infrastructure and activities farther from these sensitive zones, it would not lead to a reduction in overall impacts. Moreover, the incremental negative impacts of the other alternatives compared with Alternative D would be largely mitigated by the application of the lease stipulations in Alternative A, as discussed below.

Alternative E—No Action: This alternative is not holding proposed regionwide Lease Sale 254 and is identified as the environmentally preferred alternative.

Lease Stipulations—The 2018 GOM Supplemental EIS describes all lease stipulations, which are included in the Final Notice of Sale Package. In the Record of Decision for the *2017–2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Final Program,* the Secretary of the Interior required the protection of biologically sensitive underwater features in all Gulf of Mexico oil and gas lease sales as programmatic mitigation; therefore, we are adopting the Topographic Features Stipulation and Live Bottom Stipulation and applying them to designated lease blocks in proposed Lease Sale 254.

The additional eight lease stipulations considered for proposed regionwide Lease Sale 254 are the Military Areas Stipulation, the Evacuation Stipulation; the Coordination Stipulation; the Blocks South of Baldwin County, Alabama, Stipulation; the Protected Species Stipulation; the United Nations Convention on the Law of the Sea Royalty Payment Stipulation; the Below Seabed Operations Stipulation; and the Stipulation on the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico. As noted, BOEM is adopting these eight stipulations as lease terms where applicable and they will be enforceable as part of the lease. Further, Appendix B of the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017–2022; Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261—Final Multisale Environmental Impact Statement* provides a list and description of standard post-lease conditions of approval that BOEM or the Bureau of Safety and Environmental Enforcement may require as a result of their plan and permit review processes for the Gulf of Mexico OCS Region.

After careful consideration, BOEM selected the preferred alternative (Alternative A) in the 2018 GOM Supplemental EIS, with certain additional blocks excluded due to their status, for proposed Lease Sale 254. BOEM is also adopting 10 lease stipulations and all practicable means of mitigation at the lease sale stage. The preferred alternative meets the purpose of and need for the proposed action, as identified in the 2018 GOM Supplemental EIS, and provides for orderly resource development with protection of human, marine, and coastal environments while also ensuring that the public receives a fair market value for these resources and that free-market competition is maintained.

Authority: This Notice of Availability of a Record of Decision is published pursuant to the regulations (40 CFR part 1505) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Michael A. Celata,

Regional Director, New Orleans Office, Department of the Interior Regions 1, 2, 4, and 6, Bureau of Ocean Energy Management.

[FR Doc. 2020–02717 Filed 2–11–20; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement and Draft Restoration Plan Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that the United States of America, on behalf of the Department of the Interior (''DOI'') acting through the U.S. Fish and Wildlife Service and the Commonwealth of Virginia, acting through the Virginia Department of Environmental Quality (VDEQ) on behalf of the Virginia Secretary of Natural Resources (collectively ''Trustees''), are providing an opportunity for public comment on a proposed Settlement Agreement (''Settlement Agreement'') among the Trustees and AdvanSix Resins & Chemicals, LLC and AdvanSix Inc. (''AdvanSix''). The Trustees are also providing notice of an opportunity for public comment on a draft Restoration Plan/Environmental Assessment (''RP/EA'').

The settlement resolves the civil claims of the Trustees against AdvanSix arising under their natural resource trustee authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 311 of the Clean Water Act (''CWA''), 33 U.S.C. 1321, and applicable state law for injury to, impairment of, destruction of, and loss of use of natural resources as a result of releases of hazardous substances on or about November 25, 2014 and October 13, 2017 into Gravelly Run, a tributary of the James River, from the AdvanSix facility located in located in Hopewell, Virginia (the ''Gravelly Run Spills''). The November 25, 2014 spill consisted of approximately 5,500 pounds of ammonium carbonate, of which approximately 600 pounds discharged directly to an outfall on Gravelly Run, resulting in a significant fish kill. The October 13, 2017 spill involved the release of phenol, causing another fish kill. Under the proposed Settlement Agreement, AdvanSix agrees to pay $184,310 to the DOI Natural Resource Damage Assessment and Restoration Fund to be used to restore, replace, rehabilitate, or acquire the equivalent of those resources injured by the Gravelly Run Spills, as proposed in the draft RP/EA. In addition, AdvanSix agrees to pay $70,690 to the Trustees for past assessment costs. AdvanSix will receive from the Trustees a covenant not to sue for the claims resolved by the settlement, including assessment costs.

In accordance with CERCLA and the CWA, the Trustees have also written a draft RP/EA that describes proposed alternatives for restoring the natural resources and natural resource services injured by the Gravelly Run Spills. The preferred restoration alternative selected by the Trustees in the Draft RP/EA is the acquisition of approximately 25 acres of marsh and upland properties along Powell Creek, a tributary of the James River and ultimate transfer to the James River National Wildlife Refuge in Prince George County, Virginia for long-term stewardship and conservation in perpetuity.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement and draft RP/EA. Comments on the proposed Settlement Agreement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to the AdvanSix Settlement Agreement, DJ No. 90–5–1–1–11263. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Comments on the draft RP/EA may be submitted to the Trustees either electronically or by mail. Written comments on the draft RP/EA should reference the AdvanSix RP/EA and be addressed to: Susan Lingenfelser, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061 or emailed to *susan_lingenfelser@fws.gov.*

All comments must be submitted no later than thirty (30) days after the publication date of this notice.

During the public comment period, a copy of the draft RP/EA will be available electronically at *https://www.cerc.usgs.gov/orda_docs/DocHandler.ashx?task=get&ID=5856.* A copy of the draft RP/EA may also be examined at the Virginia Field Office in Gloucester, Virginia. Arrangements to view the documents must be made in advance by contacting Susan Lingenfelser at (804) 824–2415.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–02774 Filed 2–11–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On February 6, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Guam in the lawsuit entitled *United States* v. *Guam Power Authority and Marianas Energy Company, L.L.C.,* Civil Action No. 1:20–cv–00007.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of the emission limits and the performance testing requirements in the National Emission Standards for Hazardous Air Pollutants regulations that govern the operation of stationary reciprocating internal combustion engines and electric utility steam generating units at Guam Power Authority's (''GPA'') Cabras and Piti power plants in Piti, Guam. The Consent Decree requires GPA to perform injunctive relief and pay a $400,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Guam Power Authority and Marianas Energy Company, L.L.C.,* D.J. Ref. No. 90–5–2–1–11000. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*

To submit comments:	Send them to:
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–02766 Filed 2–11–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On January 28, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in *United States* v. *Dynegy Zimmer LLC,* Civil Action No. 1:20–cv–00071.

The Consent Decree settles claims brought by the United States for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* in connection with a coal fired power plant owned and operated by Defendant in Moscow, Ohio. The Consent Decree requires the Defendant to undertake measures to address CAA violations and prevent future CAA violations. Defendant will also implement a mitigation project and a supplemental environmental project. Under the Consent Decree, Defendant will pay a civil penalty of $600,000.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Dynegy Zimmer LLC,* D.J. Ref. No. 90–5–2–1–11425. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–02738 Filed 2–11–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2020–01; Exemption Application No. D–11998]

Exemption From Certain Prohibited Transaction Restrictions Involving UBS Asset Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Global Wealth Management U.S. Divisions (collectively, the Applicants or the UBS QPAMs) Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). The exemption affects the ability of certain entities with specified relationships to UBS AG (UBS), UBS Securities Japan Co., Ltd. (UBS Securities Japan), and UBS (France) S.A. (UBS France) to continue to rely upon relief provided by Prohibited Transaction Exemption 84–14.

DATES: This exemption will be in effect for five years beginning on February 20, 2020 and ending on February 20, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mica of the Department at (202) 693–8402. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 30, 2019, the Department published a notice of proposed exemption in the **Federal Register** at 84 FR 51621, permitting certain entities with specified relationships to UBS to continue to rely upon the relief provided by PTE 84–14 [1] for a period of five years, notwithstanding certain criminal convictions, as described herein (the Convictions) and the 2019 French Conviction.

The Department is granting this exemption to ensure that Covered Plans [2] with assets managed by an asset manager within the corporate family of UBS may continue to benefit from the relief provided by PTE 84–14. This exemption will be in effect for five years from February 20, 2020 (the date the relief in PTE 2019–01[3] expires) through February 20, 2025. The grant of this five-year exemption does not imply, and is not intended to imply, that the Department will grant additional relief for UBS QPAMs to continue to rely on the relief in PTE 84–14 following the end of the five-year period.

This exemption provides only the relief specified in the text of the exemption, and only with respect to the criminal convictions or criminal conduct described herein. It provides no relief from violations of any law other

[1] 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[2] ''Covered Plan'' is a plan subject to Part 4 of Title 1 of ERISA (''ERISA-covered plan'') or a plan subject to section 4975 of the Code (''IRA'') with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[3] See PTE 2019–01; 84 FR 6163, February 26, 2019.

the prohibited transaction provisions of ERISA and the Code. Furthermore, the Department cautions that the relief in this exemption will terminate immediately if, among other things, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions or the 2019 French Conviction) during the Exemption Period. The Department intends for the terms of this exemption to promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a UBS QPAM. The Department makes the requisite findings under ERISA section 408(a) based on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicants requested an individual exemption pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

Department's Comment

The Department cautions that the relief in this exemption will terminate immediately if an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions and the 2019 French Conviction) during the Exemption Period. Although the UBS QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The Department specifically designed the terms of this exemption to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction, or the expiration of this exemption without additional relief, or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due by November 14, 2019. The Department received written comments from the Applicants and a member of the public. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the exemption, as described below.

UBS QPAMs' Comments

I. The Term of the Exemption

The Applicants request that the Department grant exemptive relief for the full term of the PTE 84–14 Section I(g) disqualification period by extending the term of the exemption from five years to either nine years or, if UBS is successful in its appeal of the 2019 French Conviction, to 10 years, beginning on January 10, 2017 (the 2017 Conviction Date).

The UBS QPAMs state the ''reasons articulated in the notice of the Proposed Exemption do not support the Department's determination that an additional exemption for a 5-year period—but not through the end of the 9-year disqualification period—'would be protective [of] and in the best interest of participants and beneficiaries.' '' The UBS QPAMs argue that the conditions of the exemption, such as the independent audit and the Audit Report, are designed to provide the Department with sufficient opportunities to review the UBS QPAMs compliance with the exemption. The UBS QPAMs state that the ''basis for the Department's determination that the Proposed Exemption is administratively feasible is that these same conditions 'will provide an incentive for, and a measure of,' the UBS QPAMs' ongoing compliance with the exemption without any 'immediate need for review and oversight by the Department.' ''.[4] The UBS QPAMs argue that limiting the term of the exemption to five years provides no additional protections given the exemption's comprehensive internal and external monitoring requirements and the protections provided by the Department's exemption regulations.

The UBS QPAMs argue that the Department justifies the five-year term in the proposed exemption by referring to a finding by the independent auditors that a UBS QPAM failed to follow the conditions of class exemption PTE 86–128 when using affiliated brokers for securities transactions,[5] but that the Department failed to explain the relevance of the auditor's findings to the five-year term. The UBS QPAMs represent that they fully corrected the audit finding, including reimbursement of approximately $11,000 of commissions plus interest for the relevant period. The UBS QPAMs also state that the following year's audit report submitted on October 3, 2019, noted the correction and stated that the relevant UBS QPAM adopted a policy prohibiting ERISA accounts from trading with affiliates.

Furthermore, the UBS QPAMs state that the Department did not explain how or why the detailing of UBS's prior convictions and conduct in the proposed exemption was relevant and how the prior convictions and conduct persuaded the Department to conclude that a only a five-year exemption would be appropriate even though the UBS QPAMs have represented that no UBS QPAM personnel participated in or had knowledge of the underlying conduct in those matters. Lastly, the UBS QPAMs, repeating their previous comments on the proposal for PTE 2017–07,[6] claim that granting a limited-term exemption would create uncertainty among covered plans regarding the duration of relief and therefore cause potential harm to the covered plans from having to

[4] The Department notes that UBS QPAMs incorrectly restated the relevant language in the proposed exemption. The actual language of the proposed exemption states ''The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each UBS QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public. The independent audit will provide an incentive for, and a measure of, compliance, while reducing the immediate need for review and oversight by the Department.'' See 84 FR 51621 at 51627 (September 30, 2019).

[5] In that audit report dated August 7, 2018, Fiduciary Counselors, Inc. states, on page 26: ''Asset Management [QPAM] informed us that during the Audit Period it utilized PTE 86–128 with respect to effecting securities transactions using affiliated brokers for one ERISA Plan client. However, it does not appear that Asset Management correctly followed all of the requirement of PTE 86–128. Specifically, it does not appear that Asset Management provided its client with the required annual termination notice. Additionally, it does not appear that Asset Management timely provided its client with the required annual disclosure summary.''

[6] 82 FR 61903 (December 29, 2017). PTE 2017–07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the 2013 and 2017 Convictions. See also the notice of proposed exemption at 81 FR 83385 (November 21, 2016).

expend the time and resources to be sure that they can replace the UBS QPAMs in the event that the Department does not grant permanent relief.

Department's Response:

The Department is not persuaded that a nine-year exemption period would be protective and in the interest of Covered Plans. UBS entities were criminally convicted three times, including twice in U.S. courts, for illegal behavior that, collectively, involved billions of dollars and spanned numerous years, across different UBS entities. Given the duration and magnitude of the UBS entities' criminal behavior, the Department cannot determine that the conditions in this exemption anticipate all of the protections that may be necessary to protect Covered Plans over the entire nine-year disqualification period. The Department remains convinced that the prospect of the Department's prospective in-depth review of any future exemption request by the UBS QPAMs provides a strong incentive for the UBS QPAMs to diligently monitor compliance with the conditions of this exemption, to the benefit of Covered Plans.

The audits required by this exemption will provide the Department with valuable insight into the UBS QPAMs' compliance history and operations. If those audits identify deficiencies, the audits' findings may well provide a basis for imposing different or additional conditions, or for the denial of a new exemption application after expiration of this exemption's five-year term.

However, the Department would not view a cycle of several positive audits alone as dispositive proof that this exemption meets, and will continue to meet, the requirements of Section 408(a) of ERISA over the entire remaining UBS QPAM disqualification period. An exemption request submitted by the UBS QPAMs containing all current, accurate, relevant material will be another necessary and important basis for any such determination.

A failure to comply with the Department's prohibited transaction class exemption 86–128 is a failure to comply with ERISA. The Department considers any instance of an exemption applicant's noncompliance with ERISA when contemplating whether the requested exemption is appropriate. Information regarding an applicant's non-compliance with ERISA, even if corrected, heightens the Department's scrutiny of the exemption request. The Department's ability to review the Audit Reports annually and for any noncompliance reported therein, whether isolated, continuing or corrected, along with the limited term of the exemption, provides the Department the opportunity to add, modify, and enhance any conditions, as necessary, in a potential future exemption and assists in determining if a future exemption is appropriate.

The Department considers the entire record before it when determining the appropriate term of the exemption. The record in this instance contains an abundance of factual information detailing the severity of the misconduct, repeated criminal violations, supervisory failures, and the breach of two previous exemptions, which themselves were necessitated by criminal conduct. Such a detailed record of criminal behavior reflects on the offending organization's compliance culture, which is a factor at the core of the Department's determinations and certainly is a large factor in the Department's consideration of the length of any exemptive relief provided.

The Department additionally notes that, if the UBS QPAMs' appeal of the 2019 French Conviction is successful, the UBS QPAMs may rely on PTE 2017–07 or this exemption during their respective effective periods, as long as the applicable conditions therein are met.[7]

II. Advisory Opinion Request

Along with their comments to the proposed exemption the UBS QPAMs reiterated their request that the Department issue an advisory opinion as to whether foreign convictions are disqualifying convictions under section I(g) of PTE 84–14. The UBS QPAMs state the request presents questions of law and policy that are critically important regardless of the Department's determinations on the term and condition of this exemption. The Department acknowledges the request, and is separately considering it pursuant to ERISA Procedure 76–1.

III. Requested Revisions to the Exemption's Conditions

The UBS QPAMs requested certain specific revisions based on their request that the Department increase the exemption's term from five years to nine years. As discussed above, the Department has decided not to modify the term of the exemption to nine years. Accordingly, it is not making these requested revisions.

The UBS QPAMs also requested other revisions to the proposed exemption's operative language in certain conditions, as discussed below.

Section I(a)

The UBS QPAMs requested that the Department modify text in Section I(a) of the proposed exemption, which in part conditions relief on the premise that third parties engaged ''on behalf of'' the UBS QPAMs did not ''know of, have reason to know of, or participate in'' the criminal conduct that is the subject of the 2019 French Conviction. Specifically, the UBS QPAMs request deletion of the sentence in Section I(a) stating ''[f]urther, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.'' Furthermore, the UBS QPAMs requested modification of the last sentence of Section I(a), which provides that a person ''participated in'' the criminal misconduct not only if the person actively engaged in the misconduct, but also if he or she knowingly approved of the criminal conduct or, with knowledge of the misconduct, failed to take active steps to prohibit it, such as reporting the conduct to supervisors. The UBS QPAMs request that the phrase ''or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors'' be deleted from Section I(a).

The Department declines to make the requested modifications to Section I(a). The Department expects the QPAMs, their employees, and agents to adhere to high standards of integrity. These standards are not satisfied merely by avoiding actively engaging in misconduct, but also extends to taking measures to stop misconduct that is known or should be known. Silent acquiescence to criminal conduct falls far short of the standards expected of parties relying on the exemption. Accordingly, the condition treats as knowing participation a party's failure to take active steps to prevent the criminal conduct that is the subject of the Convictions and the 2019 French Conviction. Moreover, it is the Department's view that the UBS QPAMs are appropriately held accountable in this manner for the conduct of the third parties they engaged on their behalf to manage or exercise authority over plan assets. If such parties knowingly participated in the criminal conduct

[7] In this circumstance, the Department would consider good faith compliance with the conditions of this exemption as compliance with the conditions of PTE 2017–07.

that is the subject of the 2019 French Conviction, the QPAMs' culpability is potentially greater than the Department assumed in drafting the exemption conditions, and there may be need for greater protections or reduced relief. The condition was specifically designed to give assurance that the UBS QPAMs and third parties engaged on the UBS QPAMs' behalf did not participate in, approve, or facilitate criminal misconduct.

Section I(b)

The UBS QPAMs have also requested that the Department modify text in Section I(b) of the proposed exemption, which in part provides that the parties engaged to act on behalf of the UBS QPAMs must not have received compensation in connection with the criminal conduct that is the subject of the 2019 French Conviction. The UBS QPAMs have requested deletion of the last sentence of Section I(b), which provides: ''[f]urther, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.''

Section I(b) also reflects the Department's view that the QPAMs and the parties engaged on their behalf to manage or exercise authority over plan assets must adhere to high standards of integrity. Accordingly, these parties engaged by the UBS QPAMs should neither have participated in nor profited from the criminal conduct that is the subject of the 2019 French Conviction. If such parties, in fact, received direct or indirect compensation in connection with the criminal conduct, their culpability, and the culpability of the UBS QPAMs, is potentially greater than the Department assumed in formulating this exemption's conditions, and there may be need for greater protections or reduced relief. Therefore, Section I(b) of the exemption will continue to extend the prohibition against the receipt of compensation in connection with the conduct that is the subject of the 2019 French Conviction to third parties with responsibility or authority over plan assets.

Section I(k)—Written Notice

Section I(k) of the exemption requires the UBS QPAMs to provide each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a UBS QPAM, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests, with a copy of the notice of exemption, a summary describing the facts that led to the Convictions and the 2019 French Conviction (the Summary), and a statement (the Statement) that the Convictions, and in the Department's view, the 2019 French Conviction, each separately result in a failure to meet a condition in PTE 84–14 and PTE 2017–07. The UBS QPAMs request the condition's language be revised to reflect that this disclosure is to be provided within 60 days of the effective date of the five-year exemption to Covered Plans that currently have a written investment or asset management agreement and that covered plans that enter a written investment or asset management agreement with a UBS QPAM after such 60-day time period must receive a copy of the exemption, the Summary, and the Notice prior to or contemporaneously with the Covered Plan's receipt of a written asset management agreement from the UBS QPAM.

The Department agrees with the request and has revised Section I(k) accordingly.

Section I(m)(1)(ii)—Compliance Officer

Section I(m)(1)(ii) states that ''[t]he Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management, the Investment Bank, and Global Wealth Management—and is led by the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board.'' The UBS QPAMs requested that the phrase ''to the Head of Compliance and Operational Risk Control, Asset Management'' in the first sentence of Section I(m)(1)(ii) be deleted.

The Department declines to make the requested change. The UBS QPAMs did not provide any substantive reason for the removal of the language from this condition and therefore have not demonstrated why the deletion of the language would be in the interest of and protective of affected plans and their participants and beneficiaries. The Department formulated this condition to ensure that the Compliance Officer designated by UBS is an individual who is directly accountable to senior management. The Department considers the Compliance Officer, the Exemption Reviews, and the Exemption Reports integral parts of this five-year exemption, without which the Department could not have made its findings that the exemption is in the interest of and protective of affected plans and their participants and beneficiaries. The exemption's conditions ensure that senior management is aware of and knowledgeable about compliance with this five-year exemption and the Policies and Training mandate. The reporting and accountability of the Compliance Officer to senior management is a part of that process.

References to ''2017 Conviction''

The term ''2018 Conviction'' was used in the proposed exemption to describe the judgment of conviction against UBS in case number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. The UBS QPAMs request the term be changed from ''2018 Conviction'' to the term ''2017 Conviction'' which was used in PTE 2017–07 and because the date of this conviction is January 10, 2017. The UBS QPAMs also request the Department add a definitional Section to the exemption stating the term ''2017 Conviction Date'' means ''January 10, 2017.''

The Department accepts the UBS QPAMs' request, and for clarity has added a definitional section to the five-year exemption stating that ''[a]ll references to 'the 2017 Conviction Date' means January 10, 2017.'' In addition, the Department has replaced the references to the ''2018 Conviction'' with the term ''2017 Conviction.''

Section II(b)—''2019 French Conviction''

On its own motion and for clarity, the Department is modifying Section II(b) defining the term ''2019 French Conviction'' to include the sentence ''The term '2019 French Conviction' also includes a decision upholding the February 20, 2019 judgment of the French First Instance Court.''

Comment From the Public

The Department received one anonymous comment from the public that did not raise any substantive issue.

After full consideration and review of the entire record, the Department has decided to grant the exemption, with

the modifications discussed above. The complete application file (D–11998) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 30, 2019, at 84 FR 51621.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: The exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption

Section I. Covered Transactions

Certain entities with specified relationships to UBS (hereinafter, the UBS QPAMs, as defined in Section II(e)) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) [8] during the Exemption Period, notwithstanding the 2013 Conviction of UBS Securities Japan Co., Ltd., the 2017 Conviction of UBS (collectively the Convictions, as defined in Section II(a)), and the 2019 French Conviction of UBS and UBS France (as defined in Section II(b)), provided that the following conditions are satisfied:

(a) The UBS QPAMs (including their officers, directors, agents other than UBS and UBS Securities Japan and UBS France, and the employees of such UBS QPAMs) did not know of, did not have reason to know of, or did not participate in: (1) The FX Misconduct; or (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know of, did not have reason to know of, or participate in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. For purposes of this exemption, ''participate in'' refers not only to active participation in the FX Misconduct, the criminal conduct that is the subject of the Convictions, and the criminal conduct that is the subject of the 2019 French Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) The UBS QPAMs (including their officers, directors, agents other than UBS, UBS Securities Japan, and UBS France, and employees of such UBS QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with: (1) The FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction. Further, any other party engaged on behalf of such UBS QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction;

(c) The UBS QPAMs will not employ or knowingly engage any of the individuals who participated in: (1) The FX Misconduct; (2) the criminal conduct of UBS Securities Japan and UBS that is the subject of the Convictions; or (3) the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction;

(d) At all times during the Exemption Period, no UBS QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such UBS QPAM with respect to one or more Covered Plans (as defined in Section II(c)) to enter into any transaction with UBS, UBS Securities Japan, or UBS France or to engage UBS, UBS Securities Japan, or UBS France to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the UBS QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions and the 2019 French Conviction;

(f) A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct that is the subject of the 2019 French Conviction; or cause the UBS QPAM or its affiliates to directly or indirectly profit from the FX Misconduct, the criminal conduct that is the subject of the Convictions, or the criminal conduct that is the subject of the 2019 French Conviction;

[8] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305(August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, UBS, UBS Securities Japan, and UBS France will not act as fiduciaries within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that UBS, UBS Securities Japan, and UBS France will not be treated as violating the conditions of this exemption solely because they acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA or section 4975(e)(3)(B) of the Code;

(h)(1) Each UBS QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the UBS QPAM are conducted independently of UBS's corporate management and business activities, including the corporate management and business activities of the Investment Bank division, UBS Securities Japan, and UBS France. This condition does not preclude a UBS QPAM from receiving publicly available research and other widely available information from a UBS affiliate;

(ii) The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The UBS QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the UBS QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the UBS QPAM's knowledge at that time, the UBS QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The UBS QPAM complies with the terms of this five-year exemption;

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. Such report shall be made to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A UBS QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the UBS QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each UBS QPAM will maintain, adjust (to the extent necessary) and implement a program of training during the Exemption Period, to be conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each UBS QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The initial audit must cover the 13-month period that begins on February 20, 2020 and ends on March 19, 2021, and must be completed by September 19, 2021. The second audit must cover the period March 20, 2021 through March 19, 2022 and must be completed by September 19, 2022. The third audit must cover the period March 20, 2022 through March 19, 2023 and must be completed by September 19, 2023. The fourth audit must cover the period March 20, 2023 through March 19, 2024 and must be completed by September 19, 2024. The fifth audit must cover the period March 20, 2024 through February 20, 2025 and must be completed by August 20, 2025. The corresponding certified Audit Reports must be submitted to the Department no later than 45 days following the completion of the audit.[9] For time periods ending prior to February 20, 2020, and covered by the audit required pursuant to PTE 2019–01,[10] the audit requirements in Section I(i) PTE 2019–01 will remain in effect.[11]

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, each UBS QPAM and, if applicable, UBS, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each UBS QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this five-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test

[9] The initial Audit Report must be submitted to the Department by November 3, 2021. The second Audit Report must be submitted to the Department by November 3, 2022. The third Audit Report must be submitted to the Department by November 3, 2023. The fourth Audit Report must be submitted to the Department by November 3, 2024. The fifth Audit Report must be submitted to the Department by October 4, 2025.

[10] 84 FR 6163 (February 26, 2019). PTE 2019–01 is an exemption that permits the UBS QPAMs to rely on the exemptive relief provided by PTE 84–14 notwithstanding the 2013 and 2017 Convictions and the 2019 French Conviction.

[11] Accordingly, pursuant to PTE 2019–01, the required audit must cover the period beginning February 20, 2019 and ending on February 19, 2020. The corresponding Audit Report must be completed by August 19, 2020 and submitted to the Department by October 3, 2020.

each UBS QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each UBS QPAM, a sample of such UBS QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such UBS QPAM's operational compliance with the Policies and Training;

(5) For the audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each UBS QPAM's Policies and Training; each UBS QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective UBS QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The UBS QPAM must promptly address any noncompliance. The UBS QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective UBS QPAM. Any action taken or the plan of action to be taken by the respective UBS QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a UBS QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a UBS QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular UBS QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(6) The auditor must notify the respective UBS QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Risk Committee of UBS's Board of Directors is provided a copy of the Audit Report; and a senior executive officer of UBS's Compliance and Operational Risk Control function must review the Audit Report for each UBS QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;

(9) Each UBS QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than 45 days following completion of the Audit Report. The Audit Reports will be made part of the public record regarding this five-year exemption. Furthermore, each UBS QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption that is entered into subsequent to the effective date of this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) UBS must notify the Department of a change in the independent auditor no later than two months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and UBS;

(j) As of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a UBS QPAM and a Covered Plan, the UBS QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: A UBS QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such UBS QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions and the 2019 French Conviction. This condition applies only to actual losses caused by the UBS QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the UBS QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw

from its arrangement with the UBS QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of PTE 2017–07,[12] the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the UBS QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of UBS and its affiliates, or damages arising from acts outside the control of the UBS QPAM;

(7) For Covered Plans that enter into a written asset or investment management agreement with a UBS QPAM on or after the effective date of this exemption, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–17, PTE 2017–07, and/or PTE 2019–01 that meets the terms of this condition. Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.

(k) Within 60 days of the effective date of this five-year exemption, each UBS QPAM will provide a **Federal Register** copy of the notice of the exemption, along with a separate summary describing the facts that led to the Convictions and the 2019 French Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions and, in the Department's view, the 2019 French Conviction, each separately result in a failure to meet a condition in PTE 84–14 and PTE 2017–07, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a UBS QPAM, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All Covered Plan clients that enter into a written asset or investment management agreement with a UBS QPAM after that date must receive a copy of the exemption, the Summary, and the Statement prior to, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the UBS QPAM. The notices may be delivered electronically (including by an email that has a link to the five-year exemption);

(l) The UBS QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violations of Section I(g) of PTE 84–14 that are attributable to the Convictions and the 2019 French Conviction. If, during the Exemption Period, an entity within the UBS corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the 2013 Conviction, 2017 Conviction, and the 2019 French Conviction), relief in this exemption would terminate immediately;

(m)(1) UBS continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review during the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions—including Asset Management, the Investment Bank, and Global Wealth Management—and is led by the head of Group Compliance, Regulatory and Governance, or another appropriate member of the Group Executive Board;

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the UBS QPAMs' compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the C&ORC function during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2019–01; any material change in the relevant business activities of the UBS QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the UBS QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her

[12] 82 FR 61903 (December 29, 2017). PTE 2017–07 is an exemption that permits UBS QPAMs to rely on the exemptive relief provided by PTE 84–14, notwithstanding the 2013 and 2017 Convictions.

knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the Exemption Period and any related correction taken to date have been identified in the Exemption Report; and (D) the UBS QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of UBS and each UBS QPAM to which such report relates, and to the head of compliance and the General Counsel (or their functional equivalent) of the relevant UBS QPAM; and the report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The first Exemption Review, including the Compliance Officer's written Exemption Report, must cover the thirteen-month period beginning on February 20, 2020 and ending on March 19, 2021, and must be completed by June 19, 2021. The second Exemption Review and Exemption Report must cover the period beginning on March 20, 2021 and ending on March 19, 2022, and must be completed by June 19, 2022. The third Exemption Review and Exemption Report must cover the period beginning on March 20, 2022 and ending on March 19, 2023, and must be completed by June 19, 2023. The fourth Exemption Review and Exemption Report must cover the period beginning on March 20, 2023 and ending on March 19, 2024, and must be completed by June 19, 2024. The fifth Exemption Review and Exemption Report must cover the period beginning on March 20, 2024 and ending on February 20, 2025, and must be completed by May 20, 2025. The Exemption review undertaken pursuant to PTE 2019–01 must cover the period February 20, 2019 through February 19, 2020 and be completed by May 19, 2020; [13]

(n) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that is the subject of the 2013 Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(o) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the U.S. Commodity Futures Trading Commission Order, dated December 19, 2012;

(p) Each UBS QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six years following the date of any transaction for which such UBS QPAM relies upon the relief in the exemption;

(q) During the Exemption Period, UBS must: (1) Immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by UBS or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Each UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six months following the end of the calendar year during which the Policies were changed.[14] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) A UBS QPAM will not fail to meet the terms of this exemption solely because a different UBS QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (p), or (r); or if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of UBS or its affiliates.

Section II. Definitions

(a) The term ''Convictions'' means the 2013 Conviction and the 2017 Conviction. The term ''2013 Conviction'' means the judgment of conviction against UBS Securities Japan Co. Ltd. in case number 3:12–cr–00268–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, sections 1343 and 2 in connection with submission of YEN London Interbank Offered Rates and other benchmark interest rates. The term ''2017 Conviction'' means the judgment of conviction against UBS in case number 3:15–cr–00076–RNC in the U.S. District Court for the District of Connecticut for one count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2 in connection with UBS's submission of Yen London Interbank Offered Rates and other benchmark interest rates between 2001 and 2010. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of the Convictions'' encompasses any conduct of UBS and/or their personnel that is described in (i) Exhibit 3 to the Plea Agreement entered into between UBS and the Department of Justice Criminal Division, on May 20, 2015, in connection with case number 3:15–cr–00076–RNC, and (ii) Exhibits 3 and 4 to the Plea Agreement entered into between UBS Securities Japan and the Department of Justice Criminal Division, on December 19, 2012, in connection with case number 3:12–cr–00268–RNC;

(b) The term ''2019 French Conviction'' means the adverse judgment on February 20, 2019 against UBS and UBS France in case Number 1105592033 in the French First Instance Court. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''criminal conduct that is the subject of the 2019 French Conviction'', includes any conduct of UBS, its affiliates, or UBS France and/or their personnel that is described in any such judgment. The term ''2019 French Conviction'' also includes a decision upholding the February 20, 2019 judgment of the French First Instance Court;

(c) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to section 4975 of the Code (an ''IRA''), in each case, with respect to which a UBS QPAM relies on PTE 84–14, or with respect to which a UBS QPAM (or any UBS affiliate) has

[13] The Exemption Reviews for the period February 20, 2019 through February 19, 2020 must be conducted and completed pursuant to the requirements of PTE 2019–01.

[14] In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(d) The term ''FX Misconduct'' means the conduct engaged in by UBS personnel described in Exhibit 1 of the Plea Agreement (Factual Basis for Breach) entered into between UBS and the U.S. Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the U.S. District Court for the District of Connecticut.

(e) The term ''UBS QPAM'' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Global Wealth Management Americas U.S. divisions of UBS that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) [15] and that relies on the relief provided by PTE 84–14, and with respect to which UBS is an ''affiliate'' (as defined in Part VI(d) of PTE 84–14). The term ''UBS QPAM'' excludes UBS Securities Japan, the entity implicated in the criminal conduct that is the subject of the 2013 Conviction; UBS, the entity implicated in the criminal conduct that is the subject of the 2017 Conviction and implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction; and UBS France, the entity implicated in the criminal conduct of UBS and UBS France that is the subject of the 2019 French Conviction.

(f) The term ''UBS'' means UBS AG.

(g) The term ''UBS France'' means ''UBS (France) S.A.,'' a wholly-owned subsidiary of UBS incorporated under the laws of France.

(h) The term ''UBS Securities Japan'' means UBS Securities Japan Co. Ltd, a wholly-owned subsidiary of UBS incorporated under the laws of Japan.

(i) All references to ''the 2019 French Conviction Date'' means February 20, 2019;

(j) All references to ''the 2017 Conviction Date'' means January 10, 2017.

(k) The term ''Exemption Period'' means the five-year period beginning on February 20, 2020 and ending on February 20, 2025;

(l) The term ''Plea Agreement'' means the Plea Agreement (including Exhibits 1 and 3 attached thereto) entered into between UBS and the U.S. Department of Justice Criminal Division, on May 20, 2015 in connection with Case Number 3:15–cr–00076–RNC filed in the U.S. District Court for the District of Connecticut.

Effective Date: This exemption will be in effect for a period of five years beginning on February 20, 2020.

Signed at Washington, DC, this 7th day of February, 2020.

Lyssa Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2020–02834 Filed 2–11–20; 8:45 am]

BILLING CODE 4510–29–P

[15] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Authorization Request Forms/ Certification/Letter of Medical Necessity

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Worker's Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Authorization Request Forms/ Certification/Letter of Medical Necessity'' to the Office of Management and Budget (OMB) for review and reinstatement, 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 March 13, 2020.

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=201906-1240-001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or 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–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to reinstate PRA authority for the Authorization Request Forms/ Certification/Letter of Medical Necessity information collection. The FECA statute grants OWCP discretion to provide an injured employee the ''services, appliances, and supplies prescribed or recommended by a qualified physician'' which OWCP considers ''likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.'' 5 U.S.C. 8103. In other words, OWCP is mandated to provide medical supplies and services—including prescription drugs such as opioids and compounded drugs—that it considers medically necessary. The FECA statute and implementing regulations are not primarily focused on managing doctor/ patient decisions relating to medication therapy and, with the exception of few limitations on fentanyl (an opioid) and other controlled substances, the FECA program policy on pharmacy benefits has generally been a policy of payment for prescribed medications in accordance with a fee schedule based on a percentage of the average wholesale price (AWP) for drugs identified by a National Drug Code (NDC). See 20 CFR 10.809. To this end, the FECA program has a prior authorization policy (based on medical necessity) for opioid and compounded drugs utilizing the pre-authorization authority already

contained in its regulations at 20 CFR 10.310(a) and § 10.800(b). Information collected on the CA–26 and the CA–27, require an injured worker's treating physician to answer a number of questions about the prescribed opioids and/or compounded drugs and certify that they are medically necessary to treat the work-related injury. The responses to the questions on the forms are intended to ensure that treating physicians have considered non-opioid and non-compounded drug alternatives, and are only prescribing the most cost effective and medically necessary drugs. The forms also permit OWCP to more easily track the volume, type, and characteristics of opioids and compounded drugs authorized by the FECA program. The forms serve as a means for injured workers to continue receiving opioids and compounded drugs only where medically necessary and simultaneously give OWCP greater oversight in monitoring their appropriate use and gather additional data about their use.

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 the OMB under the PRA approves it 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 1240–0055.

OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL seeks to reinstate PRA authorization for this information collection for three (3) more years, without any change to existing requirements. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 6, 2019 (84 FR 59842).

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 1240–0055. 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–OWCP.

Title of Collection: Authorization Request Forms/Certification/Letter of Medical Necessity.

OMB Control Number: 1240–0055.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 45,600.

Total Estimated Number of Responses: 45,600.

Total Estimated Annual Time Burden: 22,800 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: February 4, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–02730 Filed 2–11–20; 8:45 am]

BILLING CODE 4510–CH–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Regular Board of Directors Meeting

TIME & DATE: 2:00 p.m., Thursday, February 20, 2020.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO

Agenda

I. Call to Order
II. Welcome Susan Ifill, COO
III. Approval of Minutes
IV. Executive Session: External Audit Presentation
V. Executive Session: Report from CEO
VI. Action Item Audit Committee Report
VII. Action Item FY20 Final Budget
VIII. Discussion Item Completion of FY19 Annual Ethics Review
IX. Discussion Item Governance Working Group Report
X. Management Program Background and Updates
XI. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

Rutledge Simmons,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2020–02947 Filed 2–10–20; 4:15 pm]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 52–025; NRC–2008–0252]

Vogtle Electric Generating Plant, Unit 3; Hearing Opportunity Associated With Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intended operation; opportunity for hearing on conformance with the acceptance criteria in the combined license; and associated orders.

SUMMARY: By letter dated January 13, 2020, Southern Nuclear Operating Company (SNC) informed the U.S. Nuclear Regulatory Commission (NRC) that its scheduled date for initial loading of fuel into the reactor for Vogtle Electric Generating Plant (VEGP) Unit 3 is November 23, 2020. The Atomic Energy Act of 1954, as amended (AEA), and NRC regulations provide the public with an opportunity to request a hearing regarding the licensee's conformance with the acceptance criteria in the combined license for the facility. This document announces the public's opportunity to request a hearing and includes orders imposing procedures for the hearing process.

DATES: A request for a hearing must be filed by April 13, 2020. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI) is necessary for

contention preparation must request access by February 24, 2020.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 or NRC Docket No. 52–025 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 *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual 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 *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The inspections, tests, analyses, and acceptance criteria (ITAAC) for this combined license, the licensee's ITAAC closure notifications, uncompleted ITAAC notifications, and ITAAC post-closure notifications; associated NRC inspection and review documents; and other supporting documents pertaining to ITAAC closure for VEGP Unit 3 are available electronically at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html.*

FOR FURTHER INFORMATION CONTACT: Cayetano Santos, Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7270, email: *Cayetano.Santos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the AEA, and the regulations in 10 CFR part 2, ''Agency Rules of Practice and Procedure,'' and 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' notice is hereby given that (1) the licensee intends to operate VEGP Unit 3; (2) the NRC is considering whether to find that the acceptance criteria in the combined license (COL) are met; and (3) interested persons have an opportunity to request a hearing regarding conformance with the acceptance criteria. This notice is accompanied by an ''Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request'' (Additional Procedures Order) and an ''Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information [SUNSI] and Safeguards Information [SGI] for Contention Preparation'' (SUNSI–SGI Access Order).

A. Information on SNC's Intent To Operate VEGP Unit 3 and on the Hearing Opportunity Associated With Facility Operation

SNC was issued a COL for VEGP Unit 3 on February 10, 2012. Under the provisions of Section 185b. of the AEA and NRC regulations in 10 CFR 52.97(b), ITAAC are included in a COL for the purpose of establishing a means to verify whether the facility has been constructed and will be operated in conformance with the license, the AEA, and NRC rules and regulations. The ITAAC are included as Appendix C to the COL. Section 185b. of the AEA requires that, after issuance of the COL, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. This AEA requirement is also set forth in 10 CFR 52.103(g), which expressly provides that operation of the facility may not begin unless and until the NRC finds that the acceptance criteria for all ITAAC are met as required by 10 CFR 52.103(g). Once the 10 CFR 52.103(g) finding is made, the licensee may proceed to the operational phase, which includes initial fuel load.

The NRC is considering whether to make the 10 CFR 52.103(g) finding that the acceptance criteria for all ITAAC are met. Prior to making this finding, Section 189a.(1)(B)(i) of the AEA provides that the NRC shall publish in the **Federal Register** a notice of intended operation that shall provide that any person whose interest may be affected by operation of the plant may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license. In the licensee's notification dated January 13, 2020 (ADAMS Accession No. ML20013F991), the licensee informed the NRC that its scheduled date for initial loading of fuel into the reactor is November 23, 2020.

B. Information on SNC's Completion of ITAAC

For every ITAAC, the licensee is required by 10 CFR 52.99(c)(1) to submit to the NRC an ITAAC closure notification explaining the licensee's basis for concluding that the inspections, tests, and analyses have been performed and that the acceptance criteria are met. These ITAAC closure notifications are submitted throughout construction as ITAAC are completed. If an event occurring after the submission of an ITAAC closure notification materially alters the basis for determining that the inspections, tests, and analyses were successfully performed or that the acceptance criteria are met, then the licensee is required by 10 CFR 52.99(c)(2) to submit an ITAAC post-closure notification documenting its successful resolution of the issue. The licensee must also notify the NRC when all ITAAC are complete as required by 10 CFR 52.99(c)(4). These notifications, together with the results of the NRC's inspection process, serve as the basis for the NRC's finding regarding whether the acceptance criteria in the COL are met.

One other required notification, the uncompleted ITAAC notification, must be submitted at least 225 days before scheduled initial fuel load and must provide sufficient information, including the specific procedures and analytical methods to be used in performing the ITAAC, to demonstrate that the uncompleted inspections, tests, and analyses will be performed and the corresponding acceptance criteria will be met. 10 CFR 52.99(c)(3). The licensee has submitted the uncompleted ITAAC notifications earlier than required, and these notifications cover all ITAAC not completed as of 315 days prior to scheduled fuel load.[1] These uncompleted ITAAC notifications provide information to members of the public for the purposes of requesting a hearing and submitting contentions on uncompleted ITAAC within the required time frames. In the final rule entitled ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' (72 FR 49367; August 28, 2007), the Commission stated that it ''expects that any contentions submitted by prospective parties regarding

[1] The licensee's cover letter for the uncompleted ITAAC notifications is available at ADAMS Accession No. ML200013F132.

uncompleted ITAAC would focus on any inadequacies of the specific procedures and analytical methods described by the licensee'' in its uncompleted ITAAC notification.

Members of the public must submit hearing requests by the deadline specified in this notice, and the hearing request must address any deficiencies with respect to uncompleted ITAAC based on the information available to the petitioner, including the uncompleted ITAAC notifications required by 10 CFR 52.99(c)(3).[2] Members of the public may not defer the submission of hearing requests or contentions because there are ITAAC that have not yet been completed. The licensee must submit an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1) after it completes these uncompleted ITAAC.

The supporting documents pertaining to ITAAC closure for VEGP Unit 3 are available electronically at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html.* These include the ITAAC and the licensee's ITAAC closure notifications, uncompleted ITAAC notifications, and any ITAAC post-closure notifications. The licensee has not yet submitted the 10 CFR 52.99(c)(4) ''all ITAAC complete notification'' required under 10 CFR 52.99(c)(4). This notification will be included at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html* when it is submitted. If a petitioner wishes to compare a subsequent ITAAC closure notification with an earlier uncompleted ITAAC notification on the same ITAAC, then the petitioner should first locate the ITAAC index number for that ITAAC in the ITAAC closure notification. ITAAC index numbers run from 1 to 875.[3] Then, the petitioner should access the ITAAC Status Report, available at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html,* and locate the ITAAC index number entry in the report. Each ITAAC index number entry includes links to ITAAC notifications associated with that ITAAC, including the uncompleted ITAAC notifications and the ITAAC closure notifications.[4]

The ITAAC Status Report also includes links to NRC inspection reports and ITAAC Closure Verification Evaluation Forms generated by the NRC staff and citations to periodically issued **Federal Register** notices of the NRC staff's determinations that certain inspections, tests, and analyses have been successfully completed. The NRC staff determinations made in these documents are interim determinations that do not become final unless and until the NRC makes the 10 CFR 52.103(g) finding at the end of construction that all acceptance criteria are met. The 10 CFR 52.103(g) finding, which will be made by the Director of NRR if all the acceptance criteria are met, will be accompanied by a document providing the rationale supporting the 10 CFR 52.103(g) finding. As stated in NRR Office Instruction LIC–114 (ADAMS Accession No. ML18267A182), the staff intends to make the 10 CFR 52.103(g) finding within 17 days of the licensee submitting the ''all ITAAC complete notification'' if all prerequisites for this finding are met.

The ITAAC Status Report will be periodically updated to reflect the submission of additional licensee ITAAC notifications and future NRC inspection reports and review documents. In addition, to provide additional background information to members of the public, *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html* includes other supporting documents, such as the final safety analysis report for the facility, the NRC's final safety evaluation report for the COL review, and the design control document for the AP1000 design certification, which the facility references. Although the ITAAC Status Report and *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html* will be periodically updated to reflect new information, there may be relevant documents (including licensee ITAAC notifications) that have been submitted or created after the most recent update and are publicly available in ADAMS. To search for documents in ADAMS using the VEGP Unit 3 docket number, 52–025, one should enter the term ''05200025'' in the ''Docket Number'' field when using the web-based search (advanced search) engine in ADAMS.

The licensee has submitted a partial ITAAC closure notification; this notification addresses partial closure of individual ITAAC for which additional work remains before the ITAAC will be fully closed. Partial ITAAC closure notification(s) are indicated in the ITAAC Status Report available at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html.* When these ITAAC are fully closed, the licensee will submit a complete ITAAC closure notification to the NRC; this notification will be available in the ITAAC Status Report. ITAAC for which a partial ITAAC closure notification has been submitted continue to be considered uncompleted and are subject to an uncompleted ITAAC notification until they are fully completed and closed.

SNC provided numerous uncompleted ITAAC notifications earlier than required; the staff was therefore able to review these notifications, which contributed to the ITAAC closure process. The staff's review of an uncompleted ITAAC notification focuses on the ITAAC completion methodology described in the notification and is documented in an Uncompleted ITAAC Notification Checklist; these checklists are available in the ITAAC Status Report.

In accordance with 10 CFR 2.105(b)(3)(iv), the notice of intended operation must identify any conditions, limitations, or restrictions to be placed on the license in connection with the finding under 10 CFR 52.103(g), and the expiration date or circumstances (if any) under which the conditions, limitations or restrictions will no longer apply. As of the date of this notice, the NRC staff has not identified any such conditions, limitations, or restrictions.

II. Hearing Requests

Any person whose interest may be affected by this proceeding and who desires to participate as a party to this proceeding must file a hearing request with the NRC. This section sets forth the requirements for requesting a hearing on whether acceptance criteria in the combined license for VEGP Unit 3 have been or will be met. This section references the requirements for hearing requests found in 10 CFR 2.309, ''Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions,'' with certain additional procedures included in the orders issued with this notice. Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR and electronically from the NRC Library on the NRC website at *https://www.nrc.gov/reading-rm.html.* All hearing requests must be filed in accordance with the filing instructions in Section III of this notice.

[2] As used in this notice and in the associated orders, the term ''petitioner'' refers to any person who (1) is contemplating the filing of a hearing request, (2) has filed a hearing request but is not admitted as a party to this proceeding, or (3) has had a hearing request granted.

[3] Because ITAAC have been deleted or consolidated through license amendments, there are fewer than 875 ITAAC in the COL.

[4] To reduce burdens on petitioners, the NRC staff has streamlined the ITAAC Status Report by removing those ITAAC notifications that have been entirely superseded by later ITAAC notifications on the same ITAAC. These superseded ITAAC notifications are still available in ADAMS.

A. A Hearing Request Must Show Standing

As required by 10 CFR 2.309(d), a hearing request shall show standing by setting forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest. Discretionary intervention pursuant to 10 CFR 2.309(e) does not apply to this proceeding because 10 CFR 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and 10 CFR 2.309(a) does not provide a discretionary intervention exception for hearings under 10 CFR 52.103 as it provides for other proceedings.

B. A Hearing Request Must Include an Admissible Contention

A hearing request must also include the contentions that the petitioner seeks to have litigated in the hearing. The contention standards for an ITAAC hearing under 10 CFR 52.103(b), which are in some respects different from the contention standards in other NRC proceedings, are as follows.

For each contention, the petitioner must meet the following requirements from 10 CFR 2.309(f)(1)(i) through (v) and (vii): [5]

- Provide a specific statement of the issue of law or fact to be raised or controverted, as required by 10 CFR 2.309(f)(1)(i). The issue of law or fact to be raised must be directed at demonstrating that one or more of the acceptance criteria in the COL have not been, or will not be, met and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety; [6]
- Provide a brief explanation of the basis for the contention, as required by 10 CFR 2.309(f)(1)(ii);
- Demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the 10 CFR 52.103(g) finding, as required by 10 CFR 2.309(f)(1)(iii) and (iv);
- Include a concise statement of the alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely, as required by 10 CFR 2.309(f)(1)(v); and
- Submit sufficient information showing, *prima facie,* that one or more of the acceptance criteria in the COL have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety, as required by 10 CFR 2.309(f)(1)(vii). This information must include the specific portion of the notification required by 10 CFR 52.99(c) that the petitioner believes is inaccurate, incorrect, and/or incomplete (*i.e.,* fails to contain the necessary information required by § 52.99(c)).[7]

As provided in the Additional Procedures Order issued with this notice, any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

Because the licensee references the AP1000 design certification rule (10 CFR part 52, Appendix D), the provisions in this design certification rule pertaining to proceedings under 10 CFR 52.103 also apply to hearing requests and contentions submitted in this proceeding. These provisions include 10 CFR part 52, Appendix D, Sections VI, VIII.B.5.g, and VIII.C.5.

C. Claims of Incompleteness

If the petitioner identifies a specific portion of the § 52.99(c) notification as incomplete and contends that the incomplete portion prevents the petitioner from making the necessary *prima facie* showing, then 10 CFR 2.309(f)(1)(vii) requires the petitioner to explain why this deficiency prevents the petitioner from making the *prima facie* showing. Such a claim is called a ''claim of incompleteness.'' The process for claims of incompleteness is intended to address situations in which the licensee's 10 CFR 52.99(c) notification is incomplete (*i.e.,* fails to contain the necessary information required by § 52.99(c)) and this incompleteness prevents the petitioner from making the necessary *prima facie* showing with respect to one or more aspects of 10 CFR 2.309(1)(i) through (v) and (vii).[8] To establish a valid claim of incompleteness, the petitioner (1) must specifically identify the portion of the 10 CFR 52.99(c) notification that the petitioner asserts is incomplete, (2) must provide an adequately supported showing that the 10 CFR 52.99(c) notification fails to include information required by 10 CFR 52.99(c), and (3) must provide an adequately supported explanation of why this deficiency prevents the petitioner from making the necessary *prima facie* showing.[9] This explanation must include a demonstration that the allegedly missing information is reasonably calculated to support a *prima facie* showing.

However, the petitioner's ability to file a claim of incompleteness does not obviate the need for the petitioner to show standing and, to the extent it can based on the available information, satisfy the contention requirements. Thus, the petitioner must make all of its claims regarding the ITAAC and satisfy the contention admissibility requirements of 10 CFR 2.309(f)(1)(i) through (v) and (vii) in its hearing request to the extent possible but for the petitioner's claim of incompleteness. A claim of incompleteness does not toll a

[5] The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to this proceeding.

[6] In accordance with 10 CFR 51.108, the Commission will not admit any contentions on environmental issues in this proceeding, and the NRC is not making any environmental finding in connection with a finding under 10 CFR 52.103(g) that the acceptance criteria are met.

[7] Consistent with 10 CFR 2.309(f)(1)(vii), a purported incompleteness in the 10 CFR 52.99(c) notification might be the basis for a petitioner's *prima facie* showing. However, if the petitioner believes that the purported incompleteness *prevents* the petitioner from making the necessary *prima facie* showing, then the petitioner may submit a claim of incompleteness as described later in this section.

[8] 10 CFR 2.309(f)(1)(i) through (v) are essential elements in making the *prima facie* showing required by the AEA and NRC regulations, and it is conceivable that an incompleteness in the licensee's 10 CFR 52.99(c) notification would prevent the petitioner from satisfying the elements in 10 CFR 2.309(f)(1)(i) through (v).

[9] For claims of incompleteness, the ''incompleteness'' refers to a lack of required information in a licensee's ITAAC notification, not to whether the ITAAC has yet to be completed. Thus, a valid claim of incompleteness with respect to an uncompleted ITAAC notification must identify, among other things, an insufficient description in the notification of how the licensee will successfully complete the ITAAC.

petitioner's obligation to make a timely *prima facie* showing. If the petitioner is unsure whether to file a contention or a claim of incompleteness on an ITAAC notification, the petitioner can submit both a contention and a claim of incompleteness at the same time, arguing in the alternative that if the contention is not admissible, then the claim of incompleteness is valid.

In addition, to the extent that a petitioner is able to make a *prima facie* showing with respect to one aspect of an ITAAC, it must do so even if there is a different aspect of the ITAAC for which a *prima facie* showing cannot be made because of an incompleteness in the licensee's 10 CFR 52.99(c) notification. Furthermore, because the *prima facie* showing must address two issues—conformance with the acceptance criteria and whether the operational consequences of nonconformance are contrary to reasonable assurance of adequate protection of the public health and safety—a valid claim of incompleteness must either explain why the incompleteness in the 10 CFR 52.99(c) notification prevents the petitioner from making the *prima facie* showing with respect to both issues, or the petitioner must make the *prima facie* showing with respect to one issue and explain why the incompleteness in the 10 CFR 52.99(c) notification prevents the petitioner from making the *prima facie* showing with respect to the other issue.

To expedite the proceeding and prevent the unnecessary expenditure of resources that might occur from litigating claims of incompleteness that could have been resolved through negotiation, the Commission is requiring consultation between the petitioner and the licensee regarding information purportedly missing from the licensee's 10 CFR 52.99(c) ITAAC notifications. This consultation must occur in a timely fashion prior to the filing of any claim of incompleteness. Specifically, the petitioner must initiate consultation with the licensee regarding any claims of incompleteness within 21 days of the notice of intended operation for all ITAAC notifications that were publicly available (or for which a redacted version was publicly available) when the notice of intended operation was published. If the ITAAC notification (or a redacted version thereof) becomes publicly available after the notice of intended operation is published, then the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public, except that consultation need not be commenced earlier than 21 days after publication of the notice of intended operation. If agreement is not reached before the deadline for filing the claim of incompleteness, then the petitioner must file the claim of incompleteness by the required deadline. Further requirements regarding consultation on claims of incompleteness, including requirements related to SUNSI or SGI and to deadlines for filing contentions once access to information is granted, are in Section II.B.2 of the Additional Procedures Order issued with this notice.

If the Commission determines that the petitioner has submitted a valid claim of incompleteness, then it will issue an order requiring the licensee to provide the additional information and setting forth a schedule for the petitioner to file a contention that meets the *prima facie* standard based on the additional information. If the petitioner files an admissible contention thereafter, and all other hearing request requirements (*e.g.,* standing) have been met, then the hearing request will be granted.

D. Access to SUNSI or SGI

A petitioner seeking access to SUNSI or SGI in the possession of the NRC for the purposes of contention formulation shall make this request in accordance with the SUNSI–SGI Access Order issued with this notice. A petitioner who seeks access to SUNSI or SGI in the possession of the licensee through the process for consultation on claims of incompleteness shall do so in accordance with Section II.B.2 of the Additional Procedures Order issued with this notice. Petitioners are required to take advantage of these processes for seeking access to SUNSI or SGI, and their failure to do so will be taken into account by the NRC.

E. Participation by Interested States, Local Governments, and Federally-Recognized Indian Tribes

A request for hearing submitted by a State, local government body, Federally-recognized Indian Tribe, or an agency thereof must comply with the provisions of 10 CFR 2.309(h)(1). The hearing request must meet the requirements for hearing requests set forth in this section, except that a State, local government body, Federally-recognized Indian Tribe, or an agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries or jurisdiction. A State, local government body, Federally-recognized Indian Tribe, or an agency thereof may also seek to participate in a hearing in accordance with 10 CFR 2.315(c).

F. Hearing Requests From the Licensee

The licensee may file a request for hearing if it disputes an NRC staff determination that an ITAAC has not been successfully completed. If the licensee requests a hearing, it must specifically identify the ITAAC subject to this dispute and the specific issues that are being disputed.[10]

G. Deadlines for Hearing Requests and Answers to Hearing Requests

Hearing requests must be filed no later than 60 days from February 12, 2020. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after this date must meet the requirements for such filings that are set forth in Section II.G of the Additional Procedures Order issued with this notice. As provided by 10 CFR 2.309(i), answers to a petitioner's hearing request must be filed within 25 days of service of the hearing request, and the petitioner is not permitted to reply to these answers. For hearing requests from the licensee, the NRC staff may file an answer within 10 days of service of the hearing request, and the licensee is not permitted to reply to the NRC staff's answer.

The Commission will expeditiously rule on all hearing requests, and the milestone for this ruling is 30 days from the filing of answers. If the petitioner's hearing request is granted, the petitioner becomes a party to the contested proceeding, subject to any limitations in the order granting the hearing request. Concurrent with the granting of the hearing request, the Commission would designate the presiding officer for the hearing and issue an order specifying the hearing procedures that would apply to the proceeding. The party's participation would be governed by the applicable procedures set forth in the Commission order and may include the opportunity to present the party's legal

[10] A hearing request from the licensee need not address the standards in 10 CFR 2.309(d) or (f). In particular, the licensee's interest in the proceeding is established by the fact that its authority to operate the facility depends on its compliance with the ITAAC. Also, the *prima facie* showing requirement does not apply to a licensee hearing request because the licensee would be asserting that an ITAAC has been successfully completed rather than asserting that the acceptance criteria have not been, or will not be, met. Licensees requesting a hearing would be challenging an NRC staff determination that an ITAAC has not been successfully completed; this NRC staff determination is analogous to a *prima facie* showing that the acceptance criteria have not been met.

and technical views, introduce evidence, and propose questions to be asked of witnesses. The hearing procedures will be selected from those described in the ''Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses'' (Final ITAAC Hearing Procedures) (81 FR 43266; July 1, 2016), and may include any additional or modified case-specific procedures that the Commission designates.[11]

H. Interim Operation

If a hearing request is granted, AEA § 189a.(1)(B)(iii) directs the Commission to determine whether to allow interim operation, which is operation of the facility for an interim period before completion of the adjudicatory hearing. Interim operation will be allowed if the NRC staff makes the 10 CFR 52.103(g) finding for all ITAAC and if the Commission determines, after considering the petitioner's *prima facie* showing and any answers thereto, that there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation. AEA §§ 185b. and 189a.(1)(B)(iii); 10 CFR 52.103(c). As provided by 10 CFR 52.103(c), the Commission will make this adequate protection determination acting as the presiding officer.

The Commission is reserving its flexibility to make the interim operation determination at a time of its discretion. Because the purpose of the interim operation provision is to prevent an ITAAC hearing from unnecessarily delaying plant operation if the hearing extends beyond scheduled fuel load, the Commission intends to make an adequate protection determination for interim operation by scheduled fuel load if the hearing is not completed by that time.

In making the adequate protection determination for interim operation, the Commission will follow the legislative intent underlying the interim operation provision. The pertinent legislative history indicates that Congress did not intend that the Commission would rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation. Instead, Congress intended interim operation for situations in which the petitioner's *prima facie* showing relates to an asserted adequate protection issue that does not present adequate protection concerns during the interim operation period or for which mitigation measures can be taken to preclude potential adequate protection issues during the period of interim operation.[12]

As stated previously, the adequate protection determination for interim operation is based on the parties' initial filings, *i.e.,* the hearing request and answers thereto. Thus, the petitioner should include in its hearing request information regarding the time period and modes of operation during which the adequate protection concern arises. Likewise, the NRC staff and the licensee should include such information in their answers to the hearing request, and the licensee should also include any proposed mitigation measures to address the adequate protection concerns raised by the petitioner. The petitioners, the NRC staff, and the licensee are reminded that, ordinarily, their initial filings will be their only opportunity to address adequate protection during interim operation.

Because the Commission's interim operation determination is a technical finding, a proponent's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which the proponent relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to a proponent's position on adequate protection during interim operation will depend on the level and specificity of support provided by the proponent, including the qualifications and experience of each expert providing expert opinion.

If the Commission grants a hearing request, it may order additional briefing as a matter of discretion to support a determination on whether there will be adequate protection during interim operation. Such a briefing order will be issued concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission will issue a briefing order allowing the NRC staff and the petitioners an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.

More information on the interim operation process can be found in the Final ITAAC Hearing Procedures (81 FR 43266).

I. Limited Appearance Statements

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to 10 CFR 2.315(a). In the discretion of the presiding officer, a person making a limited appearance may make an oral or written statement of position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, the presiding officer will not provide for oral limited appearance statements unless an oral hearing is held. In addition, a person making a limited appearance statement may not otherwise participate in the proceeding. Such limited appearance statements shall not be considered evidence in the proceeding.

III. Electronic Submissions (E-Filing)

Except for an initial request for access to SUNSI or SGI made pursuant to the SUNSI–SGI Access Order, all documents filed in this proceeding, including a request for hearing, any motion or other document filed in the proceeding prior to the submission of a request for hearing, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) as modified by the procedures in the orders issued with this notice.[13] Participants to this proceeding must submit and serve all adjudicatory documents over the internet, or in some cases mail copies on electronic storage media by overnight mail. The user's guide for electronic adjudicatory submissions is available at *https://www.nrc.gov/site-help/e-submittals/adjudicatory-eie-submission-user-guide.pdf.* Participants may not

[11] In accordance with 10 CFR 2.309(g), participants to this proceeding may not address the selection of hearing procedures in their initial filings. The NRC provided the public with an opportunity to comment on generic hearing procedures during the comment period on the proposed generic procedures. *See* Final ITAAC Hearing Procedures, 81 FR 43266; Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met, 79 FR 21958 (Apr. 18, 2014) (Proposed ITAAC Hearing Procedures). This prohibition, however, does not apply to a licensee's hearing request because such hearing requests are not subject to 10 CFR 2.309 and because the generic procedures did not address the procedures for hearings requested by the licensee.

[12] Additional background information regarding interim operation can be found in the **Federal Register** notice for the Final ITAAC Hearing Procedures (81 FR 43266).

[13] The initial request for access to SUNSI or SGI must be made in accordance with the procedures set forth in the SUNSI–SGI Access Order that accompanies this notice.

submit paper copies of their filings unless they seek an exemption in accordance with the procedures described later in this section.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should (1) obtain a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for this proceeding and (2) contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to advise the Secretary that the participant will be submitting a request for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding so that the filer need not serve the documents on those participants separately. Therefore, the licensee and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by overnight mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemaking and Adjudications Staff, Mail Stop OWFN 16–B33, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by overnight mail upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Any person who files a motion pursuant to 10 CFR 2.323 (as modified by the Additional Procedures Order issued with this notice) must consult with counsel for the licensee and counsel for the NRC staff. Counsel for the licensee is M. Stanford Blanton, Balch & Bingham LLP, 205–226–3417, *sblanton@balch.com.* Counsel for the NRC staff in this proceeding is Michael Spencer, 301–287–9115, *Michael.Spencer@nrc.gov.*

Documents submitted in this proceeding will appear in the NRC's electronic hearing docket, which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a hearing request will require that the petitioner include information on local residence in order to demonstrate a proximity assertion of interest in this proceeding. With respect to copyrighted works, except for limited excerpts that support the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 4th day of February 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1: Orders Associated With the Notice of Intended Operation

Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request

I. Background

The Atomic Energy Act of 1954, as amended (AEA), grants the NRC discretion to establish appropriate procedures for conducting a hearing on whether a facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, provided that the NRC explains its reasoning for establishing those procedures. AEA § 189a.(1)(B)(iv). As provided by 10 CFR 2.310(j), the Commission designates on a case-specific basis the procedures for proceedings on a Commission finding under 10 CFR 52.103(c) and (g), which includes the Commission determination on a hearing request under 10 CFR 52.103(c).[14] This order contains the procedures that govern requests for hearings on conformance with the prescribed acceptance criteria in the combined license, as well as other filings that may be submitted before a Commission ruling on the hearing request.[15] The procedures in this order were approved by the Commission for use on a general basis in the ''Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses'' (Final ITAAC [inspections, tests, analyses, and

[14] *See* Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 FR 49352, 49414 (August 28, 2007) (final rule).

[15] This order contains only procedures governing the period prior to a ruling on the hearing request. If the Commission grants a hearing request or determines that a claim of incompleteness is valid, then the Commission will issue procedures governing the resolution of these issues concurrently with its decision on the hearing request.

acceptance criteria] Hearing Procedures) (81 FR 43266; July 1, 2016).

The Commission developed the procedures in this order based on the NRC's rules of practice in 10 CFR part 2, primarily Subpart C, adopting or modifying them as necessary to conform to the expedited schedule and specialized nature of hearings on ITAAC. The Commission modeled these procedures on the existing rules because they have proven effective in promoting a fair and efficient process in adjudications and there is a body of experience and precedent interpreting and applying these provisions. In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures in this order if they are already familiar with the existing rules. To the extent that the Commission has substantively modified these rules, the basis for the Commission's decision is set forth in this order.[16] And to the extent that the Commission has adopted the rules with little or no substantive change, the Commission incorporates by reference the basis for their promulgation in 10 CFR part 2.

Many of the modifications the Commission has made to the hearing procedures in existing regulations are to account for the requirement in the AEA that, to the maximum possible extent, decisions resolving issues raised by an ITAAC hearing request shall be rendered within 180 days of the publication of the notice of intended operation or the anticipated date for initial loading of fuel, whichever is later. AEA § 189a.(1)(B)(v). Therefore, the Commission has established a narrow time frame for hearings on ITAAC, which is reflected in reduced time limits for certain adjudicatory actions. The Commission has also made appropriate changes to the ''Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information [SUNSI] and Safeguards Information [SGI] for Contention Preparation'' (SUNSI–SGI Access Order), which immediately follows this order. The participants are obligated to ensure that their representatives and witnesses are available during the hearing process to perform all of their hearing-related tasks on time. The competing obligations of the participants' representatives or witnesses will not be considered good cause for any delays in the schedule.

II. Hearing Procedures

The procedures set forth herein and in the SUNSI–SGI Access Order issued with this notice are exclusive—in other words, no procedures other than those stated in the orders issued with the notice of intended operation apply to this proceeding, unless modified by a later Commission order. Thus, if a provision of 10 CFR part 2 is not expressly referenced in this order, then it does not apply to this proceeding, unless modified by a later Commission order.

A. Briefing of Legal Issues in Filings

In order to expedite the proceeding and ensure sound decision making by the presiding officer, participants must fully brief all relevant legal issues in their filings.

B. Hearing Requests and Answers to Hearing Requests

1. *Requirements for Hearing Requests*

a. Hearing requests must be filed within 60 days of the publication of the notice of intended operation. Section II.G of this order governs hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after 60 days from the publication of the notice of intended operation.

b. Hearing requests from petitioners must meet the requirements of 10 CFR 2.309(f)(1)(i) through (v) and 10 CFR 2.309(f)(1)(vii). The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to this proceeding.

c. The requirements of Sections VI, VIII.B.5.g and VIII.C.5 of the AP1000 design certification rule apply to this proceeding.

d. A hearing request from a petitioner must include a demonstration that the petitioner has standing in accordance with the requirements of 10 CFR 2.309(d). Additionally, the provisions of 10 CFR 2.309(h) apply to this proceeding. However, discretionary intervention pursuant to 10 CFR 2.309(e) does not apply to this proceeding because 10 CFR 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and 10 CFR 2.309(a) does not provide a discretionary intervention exception for hearings under 10 CFR 52.103 as it provides for other proceedings.

e. Any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

f. Hearing requests from the licensee must specifically identify the ITAAC whose successful completion is being disputed by the NRC staff and identify the specific issues that are being disputed.

2. *Consultation on Claims of Incompleteness:* To expedite the proceeding and prevent the unnecessary expenditure of resources that might occur from litigating claims of incompleteness that could have been resolved through negotiation, the Commission is requiring consultation between the petitioner and the licensee regarding information purportedly missing from the licensee's 10 CFR 52.99(c) ITAAC notifications. This consultation must occur prior to the filing of any claim of incompleteness and must be in accordance with the provisions set forth below.

a. The petitioner must make a sincere effort to timely initiate and meaningfully engage in consultation with the licensee, and the licensee must make a sincere effort to listen to and respond to the petitioner. Both the petitioner and the licensee must make sincere efforts to resolve the petitioner's request and must complete consultations (and any delivery of documents) with due dispatch.

b. The petitioner must initiate consultation with the licensee regarding any claims of incompleteness within 21 days of the notice of intended operation for all ITAAC notifications that were publicly available (or for which a redacted version was publicly available) when the notice of intended operation was published. If the ITAAC notification (or a redacted version thereof) becomes publicly available after the notice of intended operation is published, then the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public, except that consultation need not be commenced earlier than 21 days after publication of the notice of intended operation.

[16] The procedures and schedule imposed by this order are based on a set of general procedures that the Commission approved after the consideration of public comments. *See* Final ITAAC Hearing Procedures, 81 FR 43266; Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met, 79 FR 21958 (Apr. 18, 2014). The notice in the **Federal Register** accompanying those general procedures provides a further explanation of their bases.

c. Within one day of the licensee discovering that consultation on a claim of incompleteness involves SUNSI or SGI, the licensee must inform the petitioner of this fact. Within one day of the licensee discovering that security-related SUNSI or SGI is involved, the licensee must also inform the NRC staff with a brief explanation of the situation.

d. If consultation on a claim of incompleteness involves security-related SUNSI or SGI, then the licensee shall not provide the security-related SUNSI or SGI unless and until the NRC has determined that such access is appropriate. Also, if SGI is involved and the petitioner continues to seek access to it, then, in order to expedite the proceeding, the petitioner must complete and submit to the NRC the background check forms and fee in accordance with Sections D.(2)(a) through D.(2)(e) of the SUNSI–SGI Access Order issued with this notice. The background check forms and fee must be submitted within 5 days of notice from the licensee that SGI is involved. Petitioners are expected to have forms completed prior to this date to allow for expeditious submission of the required forms and fee. The petitioner should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC.

e. In determining whether access to SUNSI or SGI is appropriate as part of the consultation process, the NRC staff shall employ the standards in Section F of the SUNSI–SGI Access Order with respect to likelihood of establishing standing, need for SUNSI, and need to know for SGI. For access to SGI, the NRC Office of Administration will also determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required by 10 CFR 73.22(b) for access to SGI. Before making a final adverse trustworthiness and reliability determination, the NRC Office of Administration will employ the process set forth in Section K.(2) of the SUNSI–SGI Access Order. If the NRC Office of Administration makes a final adverse determination on trustworthiness and reliability, any request for review of this determination must be filed with the Chief Administrative Judge within 7 days of receipt of the adverse determination, any NRC staff response must be filed within 7 days of receipt of the request for review, and such requests for review shall be resolved in accordance with Section K.(4) of the SUNSI–SGI Access Order.[17]

f. If access to SUNSI or SGI is granted, the presiding officer for any non-disclosure agreement or affidavit or protective order will be designated in accordance with Sections G and H of the SUNSI–SGI Access Order. The approved protective order templates announced in ''Protective Order Templates for Hearings on Conformance With the Acceptance Criteria in Combined Licenses'' (84 FR 3515; Feb. 12, 2019), should serve as a basis for case-specific protective orders, as appropriate. Release and storage of SGI shall be in accordance with Section I of the SUNSI–SGI Access Order.

g. Any contention based on additional information provided to the petitioner by the licensee through consultation on claims of incompleteness shall be due within 20 days of the petitioner's access to the additional information, unless more than 20 days remains between the petitioner's access to the additional information and the deadline for the hearing request, in which case the contention shall be due by the later hearing request deadline.

h. If agreement is not reached before the deadline for filing the claim of incompleteness, then the petitioner must file the claim of incompleteness by the required deadline.

i. If a claim of incompleteness is filed, the petitioner must include with its claim of incompleteness a certification by the attorney or representative of the petitioner that the petitioner (1) complied with the timeliness requirements for consultation and (2) made a sincere effort to meaningfully engage in consultation with the licensee on access to the purportedly missing information prior to filing the claim of incompleteness. This certification may include any additional discussion that the petitioner believes is necessary to explain the situation.

j. A claim of incompleteness involving SUNSI or SGI must (1) specifically identify the extent to which the petitioner believes that any requested information might be SUNSI or SGI, and (2) include a showing of the need for the information (for access to SUNSI) or need to know (for access to SGI). The showing of need for SUNSI must satisfy the standard in Section D.(1)(iii) of the SUNSI–SGI Access Order, and the showing of need to know for SGI must satisfy the standard in Section D.(1)(iv) of the SUNSI–SGI Access Order. A claim of incompleteness involving SGI must also state that the required forms and fee for the background check have been submitted to the NRC in accordance with Sections D.(2)(a) through D.(2)(e) of the SUNSI–SGI Access Order.

k. A licensee answer to a claim of incompleteness must include a certification by the licensee's attorney or representative that the licensee (1) complied with the timeliness requirements for consultation and (2) made a sincere effort to listen to and respond to the petitioner and to resolve the petitioner's request prior to the filing of the claim of incompleteness. This certification may include any additional discussion that the licensee believes is necessary to explain the situation. An answer from the licensee must also specifically identify the extent to which the licensee believes that any requested information might be SUNSI or SGI.

l. In determining whether a claim of incompleteness is valid, the Commission will consider all of the information available to the petitioner, including any information provided by the licensee. The Commission will also consider whether the participants have discharged their consultation obligations in good faith.

3. *Effect of Hearing Requests on Interim Operation*

a. If the petitioner argues that the information raised in the hearing request will affect adequate protection during interim operation, then, in order for its views to be considered before the Commission makes the interim operation determination, the petitioner shall provide its views on this issue, including the time periods and modes of operation in which the adequate protection concern arises, at the same time it submits the hearing request.[18]

b. Because the Commission's interim operation determination is a technical finding, a petitioner's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which it relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to a petitioner's position on adequate

[17] If consultations are not successful because the NRC staff makes an adverse determination on the petitioner's likelihood of establishing standing, need for SUNSI, or need to know for SGI, then the issues of standing, need for SUNSI, and need to know for SGI (as applicable) will be resolved in a ruling on the claim of incompleteness if the petitioner decides to file a claim of incompleteness.

[18] A claim of incompleteness does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing.

protection during interim operation will depend on the level and specificity of support provided by the petitioner, including the qualifications and experience of each expert providing expert opinion.

4. *Answers*

a. Answers to a petitioner's hearing request shall be filed within 25 days of service of the hearing request in accordance with 10 CFR 2.309(i)(1). An answer to a licensee's hearing request may be filed by the NRC staff within 10 days of service of the hearing request.

b. Any answers to the proffered contention from the NRC staff and the licensee shall include their views regarding the impact of the issues raised in the hearing request on adequate protection during interim operation, including the licensee's plans, if any, to propose mitigation measures to ensure adequate protection during interim operation. NRC staff filings addressing interim operation should address any terms and conditions that should be imposed to assure adequate protection during the interim period. Because the Commission's interim operation determination is a technical finding, the NRC staff's and the licensee's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which they rely. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to the NRC staff's or the licensee's position on adequate protection during interim operation will depend on the level and specificity of support provided, including the qualifications and experience of each expert providing expert opinion.

c. As provided by 10 CFR 2.309(i)(2)–(3), replies to answers are not permitted. If the Commission grants the hearing request, it may determine that additional briefing is necessary to support an adequate protection determination on interim operation. If the Commission makes determinations that additional briefing is necessary on the adequate protection determination, then it intends to issue a briefing order concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission intends to issue a briefing order allowing the NRC staff and the petitioner an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.

5. *Timing for Decision on Hearing Requests*

a. Unless the Commission extends its time for review, the Commission will rule on a hearing request within 30 days of the filing of answers.

b. A Commission interim operation determination need not be made in conjunction with a ruling on the hearing request.

C. General Motions

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in 10 CFR part 2, subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed within 7 days after the occurrence or circumstance from which the motion arises, or earlier, as prescribed by the presiding officer. Answers to motions shall be filed within 7 days after service of the motion, or earlier, as prescribed by the presiding officer. Except for the filing deadlines, motions and answers shall otherwise conform to the requirements of 10 CFR 2.323(a) through (d). The provisions of 10 CFR 2.323(g) apply to this proceeding.

D. Motions for Extension of Time

1. Except as otherwise provided, the presiding officer may, for good cause shown, extend the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time. A showing of good cause must be based on an event occurring before the deadline in question.

2. When determining whether the requesting participant has demonstrated good cause, the presiding officer shall take into account the factors in 10 CFR 2.334(b):

a. Whether the requesting participant has exercised due diligence to adhere to the schedule;

b. Whether the requested change is the result of unavoidable circumstances; and

c. Whether the other participants have agreed to the change and the overall effect of the change on the schedule of the case.

3. In furtherance of the statutory direction regarding the expeditious completion of the hearing, ''good cause'' is to be interpreted strictly, and a showing of ''unavoidable and extreme circumstances'' [19] is required for any extension, no matter how minor. Because good cause will be interpreted strictly, meritorious motions will likely be based on events outside the participant's control.

4. Motions for extension of time shall be filed as soon as possible but no later than 3 days before the deadline, with one limited exception. If the participant is unable to file an extension request by 3 days before the deadline, then the participant must (1) file its request as soon as possible thereafter, (2) demonstrate that unavoidable and extreme circumstances prevented the participant from filing its extension request by 3 days before the deadline, and (3) demonstrate that the participant filed its extension request as soon as possible thereafter.[20]

E. Requests for Reconsideration and Motions for Clarification

Motions for reconsideration are not allowed for decisions on the hearing request or any presiding officer decisions prior to the decision on the hearing request. Instead, reconsideration will only be allowed for a presiding officer's initial decision after hearing and Commission decisions on appeal of a presiding officer's initial decision. Reconsideration is allowed in these narrow instances because these are the most important decisions in the proceeding and motions for reconsideration of these decisions do not prevent them from taking effect. Reconsideration is not permitted for other decisions because (1) reconsideration is unlikely to be necessary for other decisions, which are interlocutory in nature, (2) the resources necessary to prepare, review, and rule on requests for reconsideration would take time away from other hearing-related tasks, (3) participants who disagree with an order of the presiding officer may seek redress through the process for appeals and petitions for review, and (4) the appellate process will not cause undue delay given the expedited nature of the proceeding. Motions for clarification are allowed for these other decisions, but to prevent them from becoming de facto motions for reconsideration, motions for clarification will be limited to

[19] This standard is taken from the Policy on Conduct of Adjudicatory Proceedings, CLI–98–12, 48 NRC 18, 21 (1998).

[20] Consistent with practice under 10 CFR 2.307, a motion for extension of time might be filed shortly after a deadline has passed, *e.g.,* an unanticipated event on the filing deadline prevented the participant from filing. *See* Amendments to Adjudicatory Process Rules and Related Requirements, 77 FR 46562, 46571 (August 3, 2012) (final rule).

ambiguities in a presiding officer order. In addition, a motion for clarification must explain the basis for the perceived ambiguity and may offer possible interpretations of the purportedly ambiguous language.

F. Presiding Officer Notifications

1. *Notification of Relevant New Developments in the Proceeding*

a. Given the potential for circumstances to change over the course of this unique proceeding, we remind the participants of their continuing obligation to notify the other participants, the presiding officer, and the Commission of relevant new developments in the proceeding.[21]

2. *Additional Notification Procedures for Pending Contentions*

a. For several reasons, it is possible for the factual predicate of a proposed contention to change before a decision on its admissibility. First, NRC regulations require for uncompleted ITAAC that hearing requests be submitted on the predictive question of whether one or more of the acceptance criteria in the combined license will not be met.[22] When the ITAAC is later completed, this may affect the basis for the proposed contention. Second, a licensee might choose to re-perform an inspection, test, or analysis for ITAAC maintenance or to dispute a proposed contention.[23] Third, events subsequent to the performance of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. To account for these possibilities, and to ensure that the presiding officer and the participants are timely notified of a change in circumstances, the NRC establishes the following additional procedures for proposed contentions that might be affected by such an event.

b. To ensure that the presiding officer and the other participants stay fully informed of the status of challenged ITAAC as a proposed contention is being considered, any answers to the proposed contention from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.

c. After answers are filed, the participants must notify the presiding officer and the other participants in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. This would include notifying the presiding officer and the other participants of information related to re-performance of an ITAAC that might bear on the proposed contention. In addition, after answers are filed, the licensee must notify the presiding officer and the other participants of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice must be filed within one day of the submission of the ITAAC closure notification or ITAAC post-closure notification to the NRC.

G. Hearing Requests, Intervention Petitions, and Motions for Leave To File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline

1. *Presiding Officer:* Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness after the original deadline must be filed with the Commission.

a. The Commission will rule upon all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If the Commission grants the hearing request, intervention petition, or motion for leave to file new contentions, the Commission will designate the hearing procedures and schedule for the newly admitted contentions and will determine whether there will be adequate protection during interim operation with respect to the newly admitted contentions. If the Commission determines that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 CFR 2.309(f)(1)(vii), the Commission will designate separate procedures for resolving the claim.

b. For motions for leave to file amended contentions, the Commission may rule on the amended contentions or may delegate rulings on such contentions to a licensing board or a single legal judge (assisted as appropriate by technical advisors). For amended contentions, a Commission ruling may not be necessary to lend predictability to the hearing process because the Commission will have provided guidance on the admissibility of the relevant issues when it ruled on the original contention. If a hearing request is granted, additional procedures governing presiding officer rulings on amended contentions will be included in a Commission order issued concurrently with its decision on the hearing request.

2. *Good Cause Required, as Defined in 10 CFR 2.309(c)*

a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed by petitioners after the original deadline will not be entertained absent a determination by the Commission or the presiding officer that the petitioner has demonstrated good cause by showing that:

(i) The information upon which the filing is based was not previously available;

(ii) The information upon which the filing is based is materially different from information previously available; and

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. To be deemed timely, hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline must be filed within 20 days of the availability of the information upon which the filing is based. To be deemed timely, motions for leave to file new or amended claims of incompleteness under 10 CFR 2.309(f)(1)(vii) must be filed within 20 days of the date that the challenged 10 CFR 52.99(c) notification (or a redacted version thereof) becomes available to the public.

3. *Additional Requirements*

a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed by petitioners after the original deadline must meet the requirements set forth in Sections II.B.1.b through II.B.1.e of this order, except that a showing of standing is not required for participants who have already addressed the standing criteria.

b. Claims of incompleteness filed after the original deadline are subject to the requirements of Section II.B.2 of this order except that Section II.B.2.b is clarified to provide that the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public.

c. Licensee hearing requests after the original deadline must be filed within 20 days of formal correspondence from the NRC staff communicating its

[21] *USEC Inc.* (American Centrifuge Plant), CLI–06–10, 63 NRC 451, 470 (2006).

[22] *See* 10 CFR 2.309(f)(1)(vii).

[23] The AEA provisions on combined licenses and ITAAC were added by the Energy Policy Act of 1992 (EPAct), Public Law Number 102–486. The legislative history of the EPAct suggests that re-performing the ITAAC would be a simpler way to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143–44 (Feb. 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

position that a particular ITAAC has not been successfully completed. Licensee hearing requests after the original deadline must also satisfy Section II.B.1.f of this order.

d. If a petitioner submitting a hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness after the deadline believes that some aspect of operation must be stayed until action is taken in the hearing process, then that petitioner has the burden of submitting its stay request simultaneously with the hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness. If the petitioner does not include a stay request with its pleading, the petitioner will have constructively waived its right to request a stay at a later time.

4. *Effect of Hearing Requests, Intervention Petitions, and New or Amended Contentions Filed After the Original Deadline on Interim Operation*

a. The provisions in Sections II.B.3 of this order also apply to hearing requests, intervention petitions, and motions for leave to file new or amended contentions that are filed by petitioners after the original deadline.

5. *Answers*

a. The provisions in Sections II.B.4.a and II.B.4.b of this order also apply to answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline, except that answers to filings from petitioners are due within 14 days of service of the hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline.

b. Replies to answers are not permitted. If the Commission grants the hearing request, intervention petition, or motion for leave to file new or amended contentions filed after the original deadline, the Commission may determine that additional briefing is necessary to support an adequate protection determination on interim operation in accordance with Section II.B.4.c of this order.

6. *Timing for Decision on Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline*

a. Unless the Commission extends the time for its review, the Commission will rule on a hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline within 30 days of the filing of answers. If a decision on the admissibility of an amended contention is delegated to a licensing board or a single legal judge (assisted as appropriate by technical advisors), the Commission expects the presiding officer to rule on the amended contention within 30 days of the filing of answers. Further procedures governing presiding officer rulings on amended contentions would be included in a Commission order issued concurrently with its decision on the hearing request.

b. A Commission interim operation determination need not be made in conjunction with a ruling on a hearing request, intervention petition, or new or amended contention after the deadline.

H. Reopening the Record

1. The NRC's existing rule in 10 CFR 2.326 will apply to any effort to reopen the record.

I. Commission Review of Presiding Officer Decisions

1. Because the Commission, itself, will be ruling on the hearing request, the only possible decision before this ruling that would not be made by the Commission would be on requests for review of NRC staff determinations on access to SUNSI or SGI. Any appeals of such decisions will be governed by Section II.I.2 of this order; 10 CFR 2.311 does not apply to this proceeding.

2. *Interlocutory Appeals*

a. Participants or petitioners may appeal to the Commission a presiding officer ruling with respect to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI. Because of the expedited nature of the proceeding, such an appeal shall be filed within 7 days after service of the order. The appeal shall be initiated by the filing of a notice of appeal and accompanying supporting brief. Any participant or petitioner may file a brief in opposition within 7 days after service of the appeal. The supporting brief and any answer shall conform to the requirements of 10 CFR 2.341(c)(3). A presiding officer order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted in whole or in part. A presiding officer order granting a request for access to SUNSI or SGI may only be appealed on the question of whether the request should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a person whose interest independent of the proceeding would be harmed by the release of the information.

b. The Commission does not expect appeals seeking to overturn a denial of access to SUNSI or SGI to delay any aspect of the proceeding unless the requestor can show irreparable harm.

3. *Certified Questions/Referred Rulings*

a. The Commission recognizes that there may be unusual cases that merit a certified question or referred ruling from the presiding officer, notwithstanding the potential for delay. Therefore, the provisions regarding certified questions or referred rulings in 10 CFR 2.323(f) and 2.341(f)(1) apply to this proceeding. However, the proceeding is not stayed by the presiding officer's referral of a ruling or certification of a question. Where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling to minimize delays in the proceeding during the pendency of the Commission's review.

J. Stays of Decisions or Actions

1. 10 CFR 2.342 and 2.1213 are applicable to this proceeding with the following exceptions:

a. The deadline in § 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days.

b. The deadline in § 2.1213(c) to file an answer supporting or opposing a stay application is shortened to 7 days.

c. A request to stay the effectiveness of the Commission's decision on interim operation will not be entertained. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the finding under 10 CFR 52.103(g) that the acceptance criteria are met and issues an order allowing interim operation.

K. Additional Provisions

1. *The following provisions in 10 CFR part 2 apply to this proceeding as written and in accordance with Commission case law, except as otherwise noted:*

a. 10 CFR 2.4 (Definitions): with the clarification that this proceeding is considered a ''contested proceeding.''

b. 10 CFR 2.8 (Information collection requirements: OMB approval).

c. 10 CFR 2.111 (Prohibition on sex discrimination).

d. 10 CFR 2.302 (Filing of documents): The initial request for access to SUNSI or SGI under the

SUNSI–SGI Access Order will be made in accordance with the provisions of the SUNSI–SGI Access Order. For all other filings, 10 CFR 2.302 applies with the exception that subsections (b)(1) and (d)(2), which relate to first-class mail delivery, do not apply. When the presiding officer has approved a method other than electronic filing through the E-Filing system, documents filed in this proceeding must be transmitted either by fax, email, or overnight mail to ensure expedited delivery. Use of overnight mail will only be allowed if fax or email is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if segmented into smaller files, the filer must segment the document and file the segments separately.

e. 10 CFR 2.303 (Docket).

f. 10 CFR 2.304 (Formal requirements for documents; signatures; acceptance for filing).

g. 10 CFR 2.305 (Service of documents, methods, proof): The initial request for access to SUNSI or SGI under the SUNSI–SGI Access Order will be made in accordance with the provisions of the SUNSI–SGI Access Order. For all other filings, 10 CFR 2.305 applies with the exception that when the presiding officer has approved a method other than electronic service through the E-Filing system, service must be made either by fax, email, or overnight mail in order to ensure expedited delivery. Use of overnight mail will only be allowed if fax or email is impractical.

h. 10 CFR 2.306 (Computation of time): with the exception that subsections (b)(1) through (b)(4), which allow additional time for mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.

i. 10 CFR 2.313 (Designation of presiding officer, disqualification, unavailability, and substitution): With the exception that subsection (a) does not apply because this order governs the selection of the presiding officer.

j. 10 CFR 2.314 (Appearance and practice before the Commission in adjudicatory proceedings): With the exception that, to expedite the proceeding, the time to appeal a disciplinary sanction under subsection (c)(3) is modified to 10 days after the issuance of the order imposing sanctions.

k. 10 CFR 2.315 (Participation by a person not a party).

l. 10 CFR 2.316 (Consolidation of parties).

m. 10 CFR 2.317 (Separate hearings; consolidation of proceedings).

n. 10 CFR 2.318 (Commencement and termination of jurisdiction of presiding officer).

o. 10 CFR 2.319 (Power of the presiding officer): Subsections (a), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (p), (q), (r), and (s) apply in their entirety. Subsection (b) applies with the clarification that this provision will not be used for purposes of discovery since there is no discovery before a contention is admitted. Subsection (f) does not apply because depositions are not allowed in this proceeding. Subsections (n) and (o) do not apply because they concern matters arising after a contention is admitted.

p. 10 CFR 2.320 (Default).

q. 10 CFR 2.321 (Atomic Safety and Licensing Boards).

r. 10 CFR 2.324 (Order of procedure).

s. 10 CFR 2.329 (Prehearing conference).

t. 10 CFR 2.330 (Stipulations).

u. 10 CFR 2.331 (Oral argument before the presiding officer).

v. 10 CFR 2.335 (Consideration of Commission rules in adjudications).

w. 10 CFR 2.343 (Oral argument).

x. 10 CFR 2.346 (Authority of the Secretary).

y. 10 CFR 2.347 (Ex parte communications).

z. 10 CFR 2.348 (Separation of functions).

aa. 10 CFR 2.390 (Public inspections, exemptions, requests for withholding).

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this order is intended to conflict with the SGI regulations unless this order expressly provides otherwise.

B. Within 10 days after publication of this notice of intended operation, any potential party who believes access to SUNSI or SGI is necessary to formulate contentions may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention in accordance with the instructions in the notice of intended operation.

C. Requests for access to SUNSI or SGI submitted later than 10 days after the publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier. To show good cause, the potential party must demonstrate that its request for access to SUNSI or SGI has been filed by the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.

D. (1) The requestor shall request permission to access SUNSI, SGI, or both by email submitted to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, *Hearing.Docket@nrc.gov;* with copies being sent to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, *RidsOgcMailCenter.Resource@nrc.gov;* and Michael Spencer, Counsel for the NRC staff, *Michael.Spencer@nrc.gov.* If it is impractical for the requestor to email its request, then the requestor must submit the letter by overnight mail on the date the request is due. The addresses for overnight mail are as follows: (a) Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Mail Stop OWFN 16–B33, 11555 Rockville Pike, Rockville, Maryland 20852; (b) Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Mail Stop OWFN 14–A44, 11555 Rockville Pike, Rockville, Maryland 20852; and (c) Michael Spencer, Counsel for the NRC staff, U.S. Nuclear Regulatory Commission, Mail Stop OWFN 14–A44, 11555 Rockville Pike, Rockville, Maryland 20852.[24] The request must include the following information:

(i) A citation to this **Federal Register** notice and a statement that the information is being requested with respect to a hearing on conformance with the acceptance criteria in the combined license for Vogtle Electric Generating Plant Unit 3;

(ii) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by a finding by the NRC that the acceptance criteria in the combined license are met;

[24] While a request for hearing and other filings in this proceeding must be made through the E-Filing system in accordance with the provisions set forth in this notice, the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

(iii) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(iv) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. The request should state that the background check forms and fees required by Section D.(2) of this order have been submitted for these individuals. In addition, the request must contain a statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(A) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [25] and

(B) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(2) If the request is for access to SGI, certain forms and fees shall be submitted as specified by Sections D.(2)(a) through D.(2)(e) of this order to support an NRC determination on trustworthiness and reliability. To initiate the background check, Form FD–258 (fingerprint card) and Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' must be completed and submitted. The requestor should contact the NRC's Office of Administration at (301) 415–3710 to request a package containing the Form FD–258 and to obtain access to Form SF–85. To obtain access to Form SF–85, each individual for whom a background check is being requested will be asked to provide the individual's full legal name, social security number, date and place of birth, telephone number, and email address.[26] Instructions for completing these two forms will be provided directly to the individual for whom the background check is being requested.

(a) A completed Form SF–85 shall be submitted for each individual who would have access to SGI and who did not submit this form as part of the pre-clearance process announced at 84 FR 54928. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through a secure website that is owned and operated by the investigative agency performing the background check.

(b) A completed Form FD–258 (fingerprint card), signed in original ink, shall be submitted in accordance with Section D.(2)(e) for each individual who would have access to SGI and who did not submit this form as part of the pre-clearance process announced at 84 FR 54928. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check.

(c) A check or money order payable in the amount of $340.00 to the U.S. Nuclear Regulatory Commission shall be submitted in accordance with Section D.(2)(e) for each individual for whom the request for access is being submitted and who did not pay this fee as part of the pre-clearance process announced at 84 FR 54928.

(d) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. This statement shall be submitted in accordance with Section D.(2)(e). While processing the request, the Office of Administration will make a final determination on whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, still apply.

(e) Copies of documents and materials required by Sections D.(2)(b), (c), and (d) of this order must be sent to the following address by overnight mail: U.S. Nuclear Regulatory Commission, Office of Administration, Personnel Security Branch, ATTN: SGI Background Check Materials for ITAAC Hearing, Mail Stop TWFN 07–D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary.

E. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

F. Based on an evaluation of the information submitted under Section D.(1), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the requestor is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or established a need to know the SGI requested.

G. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both Sections F.(1) and F.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a non-disclosure agreement or affidavit, or protective order [27] setting

[25] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[26] After providing this information, the individual usually should be able to obtain access to the online Form SF–85 within two business days.

[27] Any motion for protective order or draft non-disclosure affidavit or agreement for SUNSI must be filed with the single legal judge designated to rule on the request (or the Chief Administrative Judge if a single legal judge has not yet been designated) within 10 days after a positive access determination

Continued

forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. The approved protective order templates announced at 84 FR 3515 should serve as a basis for case-specific protective orders, as appropriate. In addition, the NRC staff must also inform any person whose interest independent of the proceeding would be harmed by the release of the information.

H. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both Sections F.(1) and F.(2), the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a non-disclosure agreement or affidavit, or protective order [28] by each individual who will be granted access to SGI. The approved protective order templates announced at 84 FR 3515 should serve as a basis for case-specific protective orders, as appropriate.

I. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

J. Filing of Contentions. Any contentions in this proceeding that are based upon the information received as a result of a request for SUNSI or SGI must be filed by the requestor no later than 20 days after the requestor receives access to that information. However, if more than 20 days remain between the date the petitioner receives access to the information and the deadline for filing the hearing request (as established in the notice of intended operation), the petitioner may file its SUNSI or SGI contentions by that later deadline.

K. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record. A recipient's challenge under 10 CFR 2.336(f)(1)(iii)(B) to the completeness and accuracy of the records relied on by the Office of Administration in making its initial adverse trustworthiness and reliability determination must be submitted within 7 days of the recipient's receipt of the records from the Office of Administration.[29]

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a request for review within 5 days of receipt of that determination with the Chief Administrative Judge, who will designate a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge.[30] The NRC staff may respond to a request for review within 5 days of service of the request.

(4) The requestor may challenge the NRC staff's adverse determination on need to know or likelihood of establishing standing with respect to access to SGI by filing a request for review with the Chief Administrative Judge within 5 days of receipt of the adverse determination, and the NRC staff may file a response within 5 days of receipt of the request for review. The requestor may challenge the NRC Office of Administration's adverse determination on trustworthiness and reliability for access to SGI by filing a request for review with the Chief Administrative Judge within 7 days of receipt of the adverse determination, and the NRC staff may file a response within 7 days of receipt of the request for review.[31] The Chief Administrative Judge will assign a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. If the challenge relates to an adverse determination by the NRC Office of Administration on trustworthiness and reliability for access to SGI, then consistent with 10 CFR 2.336(f)(1)(iv), neither the single legal judge chosen to rule on the challenge nor any technical advisors supporting a ruling on the challenge can serve as the presiding officer for the ITAAC proceeding.

(5) Appeals of presiding officer decisions on access to SUNSI or SGI must be made pursuant to the provisions of the ''Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request'' (Additional Procedures Order) that was issued with this notice.

L. Review of Grants of Access. A person other than the requestor may file a request for review challenging an NRC staff determination granting access to SUNSI whose release would harm that person's interest independent of the proceeding.[32] Such a request for review must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access, and the NRC staff may respond to a request for review within 5 days of receiving it. The Chief Administrative Judge will designate a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. Appeals of presiding officer decisions on access to SUNSI must be made pursuant to the

is made. If such motion is filed with the Chief Administrative Judge, the Chief Administrative Judge will designate a single legal judge to rule on the motion.

[28] Any motion for protective order or draft non-disclosure affidavit or agreement for SGI must be filed with the single legal judge designated to rule on the request (or the Chief Administrative Judge if a single legal judge has not yet been designated) within 10 days after a positive access determination is made. If such a motion is filed with the Chief Administrative Judge, the Chief Administrative Judge will designate a single legal judge to rule on the motion.

[29] The time period for a challenge under 10 CFR 2.336(f)(1)(iii)(B) has been reduced from 10 days to 7 days in order to expedite the proceeding and to be consistent with the 7-day period given in this order for interlocutory appeals of presiding officer determinations on access to SUNSI or SGI.

[30] Requestors should note that appeals of NRC staff determinations and other filings must be made through the E-Filing system in accordance with the provisions set forth in this notice even though the initial SUNSI/SGI request submitted to the NRC staff under these procedures was made by other means.

[31] The time periods for filing requests for review (and responses thereto) under 10 CFR 2.336(f)(1)(iv) have been reduced to 7 days in order to expedite the proceeding and to be consistent with the 7-day period given in this order for interlocutory appeals (and answers thereto) of presiding officer determinations on access to SUNSI or SGI. Other than the time periods for filing, requests for review of final adverse determinations by the Office of Administration on trustworthiness and reliability (and NRC staff responses to requests for review) must comply with 10 CFR 2.336(f)(1)(iv).

[32] An NRC staff determination to grant access to SGI may not be challenged.

provisions of the Additional Procedures Order that was issued with this notice.

M. The Commission expects that the NRC staff and the presiding officer will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the requirements in this notice. Attachment 2 to this order summarizes the target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 4th day of February 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 2—TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of intended operation, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in this adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination on whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any person whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff continues processing the background check (including fingerprinting for a criminal history records check), and begins information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for the requestor to file a request for review seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the Chief Administrative Judge. If NRC staff finds ''need'' for SUNSI, the deadline for any person whose interest independent of the proceeding would be harmed by the release of the information to file a request for review seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to requests for review of NRC staff determination(s).
30	(Receipt +20) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for protective order and draft non-disclosure affidavit. Deadline for applicant/licensee to file non-disclosure agreement for SUNSI.
60	Deadline for submitting a hearing request containing: (i) A demonstration of standing and (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 for answers to hearing request).
Staff SGI Determination Date + 7.	Deadline for requestor to seek reversal of a final adverse NRC Office of Administration trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
Staff SGI Determination Date + 10[33].	If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for protective order and draft non-disclosure affidavit.
A	If access granted: Issuance of presiding officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed non-disclosure affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
Receipt of Access + 20 days.	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 20 days remain between the requestor's access to the information and the deadline for filing the hearing request (as established in the notice of intended operation), the requestor may file its SUNSI or SGI contentions by that later deadline.
Contention Receipt + 14 days.	(Contention receipt + 14 days) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
Filing of answers + 30	Decision on contention admissibility.

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[33] The completion time for access determinations may vary based on the information revealed during the background check (including a criminal history records check), and because some portion of the background check is usually conducted by agencies other than the NRC, the processing time may vary and is difficult to predict with any certainty. However, the NRC staff will make its utmost efforts to complete all activities associated with requests for access to SGI as soon as possible.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88146; File No. SR–NSCC–2019–802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection to Advance Notice To Issue Term Debt as Part of Its Liquidity Risk Management Framework

February 7, 2020.

On December 13, 2019, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2019–802 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to issue term debt as part of its Clearing Agency Liquidity Risk Management Framework (''Framework''). The Advance Notice was published for public comment in the **Federal Register** on January 14, 2020,[4] and the Commission has received no comments regarding the changes proposed in the Advance Notice. This publication serves as notice of no objection to the Advance Notice.

I. The Advance Notice

NSCC has proposed to raise cash through the periodic issuance and private placement of term debt to qualified institutional investors in an aggregate amount not to exceed $10 billion, as described in greater detail below. The cash from the term debt issuances would supplement NSCC's existing default liquidity resources, which collectively provide NSCC with liquidity to complete end-of-day settlement in the event of the default of an NSCC Member.[5] Such liquidity resources currently include the proceeds from the issuance and private placement of short-term, unsecured notes in the form of commercial paper and extendable notes [6] and cash that would be obtained by drawing upon NSCC's committed 364-day credit facility with a consortium of banks.[7]

A. General Terms of the Term Debt Issuances

NSCC expects the average maturity of the term debt would range between two and ten years. The term debt would be represented by unsecured, unsubordinated and non-convertible medium-term and long-term global notes held in the name of The Depository Trust Company (''DTC''), or its nominee, Cede & Co.[8] The notes would be issued and transferred only through the book-entry system of DTC.

The term debt would be issued to qualified institutional investors through private placements and offered in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act of 1933.[9] NSCC would be party to certain transaction documents in connection with each issuance and private placement, including an indenture with the trustee and purchase agreements.[10] The purchase agreements would each be based on the standard form of dealer agreement for similar debt issuances, which is published by the Securities Industry and Financial Markets Association.

NSCC intends to time each debt issuance and stagger maturity dates of each issuance in order to ladder the maturities to avoid concentrations of maturities. NSCC also would have the ability to make use of optional features to call any of the issued term debt, in whole or in part, at any time prior to the maturity date of that debt, and the issued term debt may contain renewable terms. The term debt would be interest bearing at either fixed or floating interest rates that are set at market rates customary for such type of debt and reflective of the creditworthiness of NSCC.

Under the proposal, NSCC would be authorized to issue an aggregate amount of up to $10 billion in term debt and has represented that it expects the average amount issued and outstanding at any time to be approximately $2–3 billion, as necessitated by its default liquidity needs.[11] NSCC estimates that each issuance would be in an amount between approximately $250 million and $1.5 billion, with an initial issuance expected to be approximately $1 billion.

NSCC has stated that, in accordance with its Clearing Agency Investment Policy, NSCC would hold the proceeds from the issuance of term debt in either its cash deposit account at the Federal Reserve Bank of New York (''FRBNY'') or in accounts at other creditworthy financial institutions.[12] These amounts would be available to draw to complete settlement as needed.

B. NSCC's Liquidity Risk Management

As a central counterparty (''CCP''),[13] NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, becoming the buyer to each seller and seller to each buyer to ensure the performance of contract, thereby reducing the risk faced by its Members and contributing to global financial stability. NSCC's liquidity risk management plays an integral part in NSCC's ability to perform its role as a CCP. If a Member defaults, NSCC, as CCP, would need to complete settlement of guaranteed transactions on the failing Member's behalf from the date of default through the remainder of the settlement cycle (currently two days for securities that settle on a regular way basis in the U.S. markets).

NSCC's Framework sets forth NSCC's liquidity risk management strategy to maintain sufficient liquidity resources in order to meet the potential funding

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] Securities Exchange Act Release No. 34–87912 (January 8, 2020), 85 FR 2187 (January 14, 2020) (File No. SR–NSCC–2019–802) (''Notice of Filing'').

[5] Terms not defined herein are defined in NSCC's Rules and Procedures (''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.* The events that constitute a Member default are specified in NSCC's Rule 46 (Restrictions on Access to Services), which provides that NSCC's Board of Directors may suspend a Member or prohibit or limit a Member's access to NSCC's services in enumerated circumstances, which include, for example, default in delivering funds or securities to NSCC or experiencing such financial or operational difficulties for which NSCC determines, in its discretion, that restriction on access to services is necessary for its protection and for the protection of its Members.

[6] *See* Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (File No. SR–NSCC–2015–802); 82676 (February 9, 2018), 83 FR 6912 (February 15, 2018) (File No. SR–NSCC–2017–807).

[7] *See* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (File Nos. SR–DTC–2017–802; SR–NSCC–2017–802).

[8] *Supra* note 4, at 5.

[9] 15 U.S.C. 77d(a)(2).

[10] NSCC states that it will engage a trustee and underwriting banks to issue the term debt to qualified institutional investors. *Supra* note 4, at 4.

[11] *Supra* note 4, at 4.

[12] *See* Securities Exchange Act Release Nos. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (File Nos. SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003); 84949 (December 21, 2018), 83 FR 67779 (December 31, 2018) (File Nos. SR–DTC–2018–012, SR–FICC–2018–014, SR–NSCC–2018–013) (approving the Clearing Agency Investment Policy). NSCC has stated that, in the event that the Commission does not object to the Advance Notice, and NSCC then has the authority to issue the term debt, NSCC will file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act, and the rules thereunder, to amend the Clearing Agency Investment Policy to include the proceeds of the debt issuance as default liquidity funds, within the definition of ''Investable Funds,'' as such term is defined therein, and provide that such amounts would be held in bank deposits at eligible commercial banks or at NSCC's cash deposit account at the FRBNY. *See* 15 U.S.C. 78s(b)(1).

[13] 17 CFR 240.17Ad–22(a)(1).

required to settle outstanding transactions of a defaulting Member in a timely manner.[14] The Framework also addresses how NSCC meets its requirement to hold qualifying liquid resources, as such term is defined in Rule 17Ad–22(a)(14) under the Act,[15] sufficient to meet its minimum liquidity resource requirement in each relevant currency for which it has payment obligations owed to its Members.

NSCC considers each of its existing default liquidity resources to be qualifying liquid resources.[16] These resources include: (1) The cash in NSCC's Clearing Fund; [17] (2) cash that would be obtained by drawing upon NSCC's committed 364-day credit facility with a consortium of banks; [18] (3) additional cash deposits, known as ''Supplemental Liquidity Deposits,'' designed to cover the heightened liquidity exposure arising around monthly option expiry periods, required from those Members whose activity would pose the largest liquidity exposure to NSCC; [19] and (4) cash proceeds from the issuance and private placement of short-term, unsecured notes in the form of commercial paper and extendable notes (''Commercial Paper Program'').[20]

The proceeds from the term debt issuances would supplement NSCC's existing default liquidity resources and provide NSCC with an additional resource it may use to meet its liquidity needs, as measured pursuant to the Framework.[21] Further, NSCC would consider the proceeds from the term debt issuances to be a qualifying liquid resource under the Framework.[22]

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[23]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[24] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a): [25]

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.[26]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[27] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[28] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[29] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(7).[30]

A. Consistency With Section 805(b) of the Clearing Supervision Act

For the reasons discussed immediately below, the Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.[31]

NSCC's issuance of term debt would provide it with an additional liquid resource that NSCC could access in the event of a Member default, supplementing NSCC's existing default liquidity resources and diversifying the type and source of such resources. The Commission believes that the proposal to issue term debt up to an aggregate amount of $10 billion, and use the proceeds as a default liquidity resource, is designed to promote robust liquidity risk management at NSCC by diversifying the set of liquid resources available to NSCC in the event of a Member default that, in turn, would allow NSCC to continue to meet its settlement obligations to its Members in a timely fashion. While the Commission notes that the proposed issuance of term debt could bring certain financial risks,[32] the Commission believes that in the event such risks were to materialize, the ability of NSCC to use other liquidity tools [33] helps promote NSCC's ability to manage liquidity risk through an overall diversified range of risk management tools.

The Commission also believes that the term debt issuance, as proposed and in light of NSCC's current finances and its approach to financial risk management, would promote safety and soundness by

[14] *See* Securities Exchange Act Release No. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (File Nos. SR–DTC–2017–004; SR–FICC–2017–008; SR–NSCC–2017–005).

[15] 17 CFR 240.17Ad–22(a)(14).

[16] *Id.*

[17] *See* Rule 4 and Procedure XV of the Rules, *supra* note 14.

[18] *See* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (File Nos. SR–DTC–2017–802; SR–NSCC–2017–802).

[19] Supplemental Liquidity Deposits are described in Rule 4A of the Rules.

[20] *See* Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (File No. SR–NSCC–2015–802); 82676 (February 9, 2018), 83 FR 6912 (February 15, 2018) (File No. SR–NSCC–2017–807).

[21] *Supra* note 14. NSCC will file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act, and the rules thereunder, to amend the Framework to include the proceeds of the debt issuance as an additional qualifying liquidity resource of NSCC. *See supra* note 12; 15 U.S.C. 78s(b)(1).

[22] *Supra* note 4, at 7.

[23] *See* 12 U.S.C. 5461(b).

[24] 12 U.S.C. 5464(a)(2).

[25] 12 U.S.C. 5464(b).

[26] 12 U.S.C. 5464(c).

[27] 17 CFR 240.17Ad-22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. NSCC is a ''covered clearing agency'' as defined in Rule 17Ad-22(a)(5).

[28] *Id.*

[29] *Supra* note 25.

[30] 17 CFR 240.17Ad–22(e)(7).

[31] *Supra* note 25.

[32] The risks include maturity risk, rollover risk, interest rate risk, and financial risk. *Supra* note 4, at 9–10.

[33] NSCC's other liquidity tools include: (1) NSCC's Clearing Fund (consisting of cash and U.S. Treasury securities); (2) NSCC's committed 364-day credit facility with a consortium of banks; (3) Supplemental Liquidity Deposits, which are cash deposits designed to cover the heightened liquidity exposure arising around monthly option expiry periods by Members whose activity would pose the largest liquidity exposure to NSCC during such periods; and (4) cash proceeds from the issuance and private placement of short-term, unsecured notes as part of NSCC's Commercial Paper Program. *Supra* note 4, at 7.

enabling NSCC to obtain additional and diversified liquid resources to cover a liquidity gap that could arise in the event of a Member default. By covering such a gap, the proposal complements NSCC's ability to meet its settlement obligations in the event of a Member default, thereby reducing the risk of loss contagion (*i.e.,* the risk of losses arising at other NSCC Members if NSCC is unable to deliver cash or securities on the defaulting Member's behalf). Reducing the risk of loss contagion during a Member default, in turn, enhances the ability of NSCC and its Members to continue to provide stability and safety to the financial markets they serve. Therefore, by enhancing NSCC's ability to address losses and liquidity pressures that otherwise might cause financial distress to NSCC or its Members, the Advance Notice promotes safety and soundness.

The Commission also believes that NSCC's proposal is consistent with reducing systemic risks and supporting the stability of the broader financial system. Reducing the risk of loss contagion would attenuate the transmission of financial shocks from defaulting Members to non-defaulting Members. Accordingly, the proposal would support the stability of the broader financial system. Thus, the Commission believes that the proposal reflected in the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.

B. Consistency With Rule 17Ad–22(e)(7)

The Commission believes that the proposal described in the Advance Notice is consistent with the requirements of Rule 17Ad–22(e)(7) under the Exchange Act. Rule 17Ad–22(e)(7) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by NSCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.

1. Consistency With Rule 17Ad–22(e)(7)(i)

In particular, Rule 17Ad–22(e)(7)(i) under the Exchange Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . [m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for the covered clearing agency in extreme but plausible conditions.''

As described above, the proposed issuance of term debt would increase the readily-available liquidity resources available to NSCC to continue to meet its liquidity obligations in a timely fashion in the event of a Member default. The funds could help maintain sufficient liquidity resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios. Additionally, the term debt issuance is designed to help ensure that NSCC has sufficient, readily available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated Members. Therefore, the Commission finds that the proposal is consistent with Rule 17Ad–22(e)(7)(i).

2. Consistency With Rule 17Ad–22(e)(7)(ii)

Rule 17Ad–22(e)(7)(ii) under the Exchange Act requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . holding qualifying liquid resources sufficient'' to satisfy payment obligations owed to clearing members. Rule 17Ad–22(a)(14) under the Exchange Act defines ''qualifying liquid resources'' to include, among other things, cash held either at the central bank of issue or at creditworthy commercial banks.

As described above, the proposed issuance of term debt would enable NSCC to hold additional cash proceeds from the issuance of the term debt in a cash deposit account at the Federal Reserve Bank of New York or a bank counterparty that has been approved pursuant to NSCC's Clearing Agency Investment Policy. Because the funds would be held at the Federal Reserve Bank of New York or a bank counterparty, they would be a qualifying liquid resource, as that term is defined in Rule 17Ad–22(a)(14).[34] Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(ii).

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–NSCC–2019–802) and that NSCC is *authorized* to implement the proposed change as of the date of this notice.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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[34] 17 CFR 240.17Ad–22(a)(14) (''Qualifying liquid resources means, for any covered clearing agency, . . . (i) cash held either at the central bank of issue or at creditworthy commercial banks . . .'').

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88133; File No. SR–LTSE–2020–03]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Initial Listing Fee and Annual Listing Fee

February 6, 2020.

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 January 30, 2020, Long-Term Stock Exchange, Inc. (''LTSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes a rule change to establish a fee schedule of listing fees for issuers of primary equity securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed to establish a fee schedule of listing fees for issuers of primary equity securities on January 22, 2020 (SR–LTSE–2020–02). On January 30, 2020, SR–LTSE–2020–02 was withdrawn and replaced by SR–LTSE–2020–03.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposed rule change to amend Rule 14.601 to establish a schedule of Initial Listing Fees and Annual Listing Fees for issuers' Primary Equity Securities.[4] Both the Initial Listing Fee and Annual Listing Fee for an issuer's Primary Equity Securities on the Exchange is proposed to be based on the company's market capitalization of its Primary Equity Securities and is proposed to be calculated as described below.

(a) Initial Listing Fee

If a company has been a public reporting company continuously listed on a national securities exchange for at least 12 months prior to listing on the Exchange, then its market capitalization shall be an unweighted average based on data derived in part from its Form 10–Q and Form 10–K filings over the prior four quarters. Specifically, the Exchange proposes to multiply the basic weighted average shares outstanding as provided in a company's Form 10–Q or Form 10–K for the end of the quarter times the closing price of the security on the final trading day of such quarter as determined from the primary listing market. For example, a company with 500 million basic weighted average shares outstanding in its most recent Form 10–Q and a closing price of $20 per share on the last trading day of the quarter would have a market capitalization for that quarter of $10 billion. The market capitalization for purposes of assessing a listing fee would be the unweighted average of the company's market capitalization as determined on the last trading day of each of the prior four quarters (''Reporting Company Market Capitalization'').[5]

If a company has not been a public reporting company continuously listed on a national securities exchange for at least 12 months prior to listing on the Exchange, then the market capitalization for purposes of the Initial Listing Fee shall be the lesser of: (i) The number of shares of common stock to be outstanding after its initial public offering as provided in the final effective registration statement times the price per share at which the company's shares were sold to the underwriters pursuant to its initial public offering (''IPO Market Capitalization''),[6] or (ii) the Reporting Company Market Capitalization method for each available quarter (*i.e.,* one, two, or three) for which the company has filed a Form 10–Q or 10–K.

If a company conducts an underwritten initial public offering and commences trading on the Exchange, then the Initial Listing Fee shall be based on the IPO Market Capitalization as described above. The company would not be eligible to use the Reporting Company Market Capitalization method because it would not, by definition, have made any Form 10–Q or Form 10–K filings as a public reporting company while listed on a national securities exchange.

The Initial Listing Fee would be valid for the remainder of the calendar year and would be prorated based on the number of remaining trading days after listing on the Exchange.

(b) Annual Listing Fee

The Annual Listing Fee for a company's Primary Equity Securities also is proposed to be based on the company's market capitalization. Specifically, the Annual Listing Fee for the upcoming calendar year would be calculated on December 1 (or such date of listing if after December 1), and would be based on the company's Form 10–Q and Form 10–K filings over the prior four fiscal quarters. Thus, the Annual Listing Fee would be calculated from filings covering the fourth quarter of the prior calendar year and the first three quarters of the current calendar year. Where a company does not have filings for the prior four fiscal quarters, its Annual Listing Fee would be calculated in the same manner as its Initial Listing Fee (but not at the prorated level).

The Annual Listing Fee would not be refunded if a company is delisted or elects to delist during the calendar year.

(c) Fee Schedule

The proposed Initial Listing Fee and Annual Listing Fee would be identical, though the former would be prorated as noted above.

The listing fees are proposed to be as follows:

Market capitalization	Amount of fee
Up to $1 billion	$150,000
More than $1 billion and up to $3 billion	200,000
More than $3 billion and up to $5 billion	250,000
More than $5 billion and up to $10 billion	300,000
More than $10 billion and up to $15 billion	350,000
More than $15 billion and up to $30 billion	400,000
More than $30 billion and up to $50 billion	450,000
More than $50 billion	500,000

[4] ''Primary Equity Security'' means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (''ADRs'') or Shares (''ADSs''). *See* Rule 14.002(a)(24).

[5] Because the deadline to file a Form 10–Q or Form 10–K occurs after the end of the quarter, it is possible that a company that has been a public reporting company continuously listed on a national securities exchange for at least 12 months prior to listing on the Exchange would have made only three such filings at the time of its initial listing on the Exchange. In such a scenario, the market capitalization shall be derived from its three most recent filings.

[6] In the case of a direct offering for which there are no underwritten securities, the price of the company's securities as of the commencement of trading on the primary listing market (*i.e.,* opening cross) shall be used in lieu of an initial public offering price.

The Exchange believes that setting fees based on market capitalization is appropriate in that it would allow the Exchange to attract listings by both larger and smaller companies. Tiering of listing fees based on the size of a company is a long-standing practice of the two primary equity listing exchanges. While these exchanges tier their fees based on the number of total shares outstanding, they do so as a means to differentiate between larger and smaller companies.[7] LTSE does not believe using total shares outstanding, a practice that dates back decades, is compelling in today's markets where shares can trade in fractions[8] or where stock splits are far less common.[9] In addition, basing listing fees on total shares outstanding can create incentives for an issuer to maintain a higher price per share instead of offering more shares.[10] The use of market capitalization as compared to total shares outstanding also avoids potentially anomalous results from stock splits or reverse mergers.[11]

Finally, the Exchange does not presently contemplate proposing any other issuer fees with respect to a listing of Primary Equity Securities, such as listing application fees, entry fees, fees for the listing of additional shares, recordkeeping fees, substitution listing fees, fees for a written interpretation of the listing rules, or hearing fees, all of which are or have been charged by other national securities exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[14] because it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed Initial Listing Fees and Annual Listing Fees are reasonable in view of the value and benefits that an LTSE listing would provide to a listed company in terms of enabling the company to demonstrate its commitment to long-termism and the Long-Term Policies set forth in Rule 14.425. The benefits to a company, its shareholders and stakeholders from pursuing long-term value creation were discussed extensively in the background and rationale for LTSE's Long-Term Policies.[15] The Exchange believes companies will find these listing expenses, whether through a sole listing or a dual listing on LTSE, as reasonable and likely offering significant value in relation to the types of expenses a public company might otherwise incur to demonstrate its commitment to long-termism and creating lasting shareholder value. The Exchange also believes that it is reasonable to charge higher fees to companies with larger market capitalizations because a larger company has more potential for realizing even greater value from listing with LTSE. Conversely, companies with smaller market capitalizations may find the higher listing fees proposed to be charged for larger companies to be a greater burden, and thus the Exchange proposes to offer a fee that starts low but increases as a company's market capitalization increases.

The proposed fees are also reasonable insofar as they fall generally within the range of listing fees charged by other national securities exchanges.[16] Moreover, the proposed Initial Listing Fees and Annual Listing Fees reflect the ''all-in'' costs of listing on the Exchange; that is, the Exchange does not currently contemplate having listing application fees, entry fees, fees for the listing of additional shares, stock splits, recordkeeping fees, substitution listing fees, fees for a written interpretation of the listing rules, or hearing fees.

Additionally, the Exchange operates in a highly competitive marketplace for the listing of primary equity securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes.[17] Every company considering whether to list on LTSE has at least two established alternatives in NYSE and Nasdaq. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct

[7] *See, e.g.,* Securities Exchange Act Release No. 34–68117 (October 26, 2012), 77 FR 66207, 66208 (November 2, 2012) (''Total shares outstanding provides a simple, objective, and efficient metric to take into account the relative size of issuers so that the Exchange can continue to incentivize listing by both large and small qualified companies . . . .''). *Cf.* ''Equity Issuers on Nasdaq Stockholm (Prices in SEK exclusive of VAT),'' Nasdaq (eff. July 1, 2019), *https://www.nasdaq.com/docs/Nasdaq_Main_Market_Stockholm_Pricelist_2019_1.pdf* (setting listing fees based on market capitalization on Nasdaq's foreign affiliate exchanges).

[8] LTSE does not believe that some of the previously stated rationales—such as companies with more shares outstanding ''have a larger number of shareholders that benefit from the liquidity and transparency that the . . . listing offers''—are necessarily true today. *See* Securities Exchange Act Release No. 34–68117 (October 26, 2012), 77 FR 66207 (November 2, 2012). The shortcomings of using total shares outstanding were also noted by another national securities exchange. *See* Securities Exchange Act Release No. 34–81725 (September 26, 2017), 82 FR 45917 (October 2, 2017). *See also* Lisa Beilfuss, ''Schwab, in Bid for Younger Clients, to Allow Investors to Buy and Sell Fractions of Stocks,'' Wall St. J. (October 17, 2019), *https://www.wsj.com/articles/schwab-in-bid-for-younger-clients-to-allow-investors-to-buy-and-sell-fractions-of-stocks-11571334424.*

[9] *See* Lu Wang, ''Stock Split Is All But Dead and a New Study Says Save Your Tears,'' Bloomberg (Aug. 23, 2017), *https://www.bloomberg.com/news/articles/2017-08-23/stock-split-is-all-but-dead-and-a-new-study-says-save-your-tears?sref=CDdNJ6yd;* Steven Russolillo, ''The Average Stock Price Is Expensive; Get Used to It,'' Wall St. J. (Jun 4, 2013), *https://blogs.wsj.com/moneybeat/2013/06/04/the-average-stock-price-is-expensive-get-used-to-it/?mod=article_inline.*

[10] *See* Alexander Osipovich, ''Tiny 'Odd Lot' Trades Reach Record Share of U.S. Stock Market,'' Wall St. J. (October 23, 2019), *https://www.wsj.com/articles/tiny-odd-lot-trades-reach-record-share-of-u-s-stock-market-11571745600.*

[11] *See, e.g.,* Securities Exchange Act Release No. 34–85252 (March 6, 2019), 84 FR 8919, 8919–20 (March 12, 2019); Securities Exchange Act Release No. 34–81725 (September 26, 2017), 82 FR 45917, 45918 (October 2, 2017).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities Exchange Act Release No. 34–86327 (July 8, 2019), 84 FR 33293 (July 12, 2019).

[16] *See* NYSE Listed Company Manual at § 902.03 (Fees for Listed Equity Securities) (fee per share of primary class of common shares is $0.00113 as of January 1, 2020, subject to a minimum of $71,000); *Id.* at § 902.02 (General Information on Fees) (''The total fees that may be billed to an issuer in a calendar year are capped at $500,000 . . . .''); Nasdaq Rule 5910(b) (All-Inclusive Annual Listing Fee) (ranges from $45,000 to $155,000 for equity securities). *See also* Nasdaq Rule 5901 (Preamble to Company Listing Fees) (''With certain exceptions, a Company that submits an application to list any class of its securities must pay a non-refundable application fee, and an entry fee as described in Rule 5910(a), which is based on the number of shares being listed. Listed Companies must also pay an All-Inclusive Annual Listing Fee.''); Nasdaq Rule 5910(a) (Entry Fee) (ranges from $150,000 to $295,000 for equity securities in 2020).

[17] *See* Securities Exchange Act Release No. 34–87832 (December 20, 2019), 84 FR 72047 (December 30, 2019).

effect on the ability of an exchange to compete for new listings and retain existing listings.

LTSE, as the newest entrant into the listing business, has no pricing power. If a company does not believe that LTSE's proposed listing fees are reasonable, then there is no reason for it to list on the Exchange; there are no regulatory requirements or pressures for any company to list on a particular exchange. A company only needs to list on a single exchange to fall within the scope and protections of being part of the SEC's national market system. Given this competitive environment, the Exchange believes that its proposed fees are reasonable while at the same time provide revenue to support the Exchange's listings program and other regulatory requirements.

The Exchange also believes its proposed tiered fee structure, where issuers with a larger market capitalization pay relatively higher Initial Listing Fees and Annual Listing Fees, is equitable and not unfairly discriminatory because setting fees based on market capitalization would allow the Exchange to attract listings by both larger and smaller companies. The Exchange notes that other national securities exchanges similarly have tiered listing fees.[18] While these exchanges tier their fees based on the number of total shares outstanding, they do so as a means to differentiate between larger and smaller companies.[19] LTSE does not believe using total shares outstanding, a practice that dates back decades, is compelling in today's world where shares commonly trade in fractions [20] or where stock splits are far less common.[21] In addition, basing listing fees based on total shares outstanding can create incentives for an issuer to maintain a higher price per share instead of offering more shares.[22] The use of market capitalization as compared to total shares outstanding also avoids potentially anomalous results from stock splits or reverse mergers.[23]

The Exchange further believes that the proposed fees would be an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and are not unfairly discriminatory. As the Commission noted in its Concept Release Concerning Self-Regulation:

> The Commission to date has not issued detailed rules specifying proper funding levels of [self-regulatory organization (''SRO'')] regulatory programs, or how costs should be allocated among the various SRO constituencies. Rather, the Commission has examined the SROs to determine whether they are complying with their statutory responsibilities. This approach was developed in response to the diverse characteristics and roles of the various SROs and the markets they operate. The mechanics of SRO funding, including the amount of revenue that is spent on regulation and how that amount is allocated among various regulatory operations, is related to the type of market that an SRO is operating. . . . Thus, each SRO and its financial structure is, to a certain extent, unique. While this uniqueness can result in different levels of SRO funding across markets, it also is a reflection of one of the primary underpinnings of the National Market System. Specifically, by fostering an environment in which diverse markets with diverse business models compete within a unified National Market System, investors and market participants benefit.[24]

The portion of an exchange's revenue derived from each of these constituencies can vary widely and is highly-dependent on an exchange's business model. An exchange that does not operate a listings program naturally derives no revenue from issuers. On the other hand, an exchange that intends to operate without trading fees or a proprietary market data feed, as is presently the case with LTSE, will be more reliant upon revenue from listings and/or membership fees.[25]

The LTSE business focuses on uniting bold ideas with patient capital, companies, and investors who measure success over years and decades, not financial quarters. As such, LTSE does not aim to compete with other exchanges for market share or trading volume, and, thus, many of the fees commonly imposed by other exchanges—such as transaction fees or market data fees—are not germane to the LTSE business model.[26] The proposed rule change recognizes the value that LTSE brings to companies. Its proposed fee structure is expected to be more reliant on companies than broker-dealers, which the Exchange believes is reasonable for an exchange that sees its strength in listings rather than principally as an execution venue.

Effective regulation is central to the proper functioning of the securities markets. Recognizing the importance of such efforts, Congress decided to require national securities exchanges to register with the Commission as self-regulatory organizations to carry out the purposes of the Act. The Exchange therefore believes that it is critical to ensure that regulation is appropriately funded. The Initial Listing Fees and Annual Listing Fees are expected to represent a key element of funding for the Exchange's total regulatory costs. Unlike other national securities exchanges with a listings program, the Exchange does not presently contemplate imposing trading fees, proprietary market data fees, co-location, or connectivity fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

LTSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would establish a schedule of Initial Listing Fees and Annual Listing Fees that falls generally within the range of listing fees charged by other national securities exchanges.[27]

The market for listing services is highly competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed rule change imposes a burden on competition.

Intramarket Competition. The proposed rule change would establish listing fees that will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which issuers can readily choose to list securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their chosen listing

[18] *See supra* note 16.

[19] *See supra* note 7.

[20] *See supra* note 8.

[21] *See supra* note 9.

[22] *See supra* note 10.

[23] *See supra* note 11.

[24] 69 FR 71255, 71267–68 (December 8, 2004).

[25] The Exchange believes that the Commission has not historically set limits on the percentage of revenues from various lines of business, noting for example, that listing fees constituted 40% and the largest single source of revenues for the NYSE in 1998. *See* Jonathan R. Macey and Maureen O'Hara, ''The Economics of Stock Exchange Listing Fees and Listing Requirements,'' 11 J. of Fin. Intermediation 297–319 (2002).

[26] The Exchange intends to establish an annual membership fee in a forthcoming proposed rule change.

[27] *See supra* text accompanying note 16.

venue, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A) of the Act,[28] and Rule 19b–4(f)(2)[29] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2020–03 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–LTSE–2020–03. 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–LTSE–2020–03, and should be submitted on or before March 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02747 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 102, SEC File No. 270–409, OMB Control No. 3235–0467

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 102 of Regulation M (17 CFR 242.102), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 102—Activities by Issuers and Selling Security Holders During a Distribution —prohibits distribution participants, issuers, and selling security holders from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by this rule may seek to use several applicable exceptions such as exclusion for actively traded reference securities and the maintenance of policies regarding information barriers between their affiliates.

There are approximately 955 respondents per year that require an aggregate total of 1,855 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes on average approximately 1.942 hours to complete. Thus, the total compliance burden per year is 1,855 burden hours. The total internal compliance cost for all respondents is approximately $129,850.00, resulting in an internal cost of compliance per respondent of approximately $135.97 (*i.e.,* $129,850.00/955 respondents).

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02779 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88132; File No. SR–PEARL–2020–03]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of a Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities

February 6, 2020.

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 January 24, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules to govern the trading of equity securities on the Exchange (referred to herein as ''PEARL Equities''). The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl,* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a series of rules in connection with PEARL Equities, which will be a facility of the Exchange. PEARL Equities will operate an electronic trading system developed to trade equity securities (the ''System'') leveraging the Exchange's existing robust and resilient technology platform. The fundamental premise of the proposal is that the Exchange will operate its equity market in a manner similar to that of other equity exchanges, with a suite of order types and deterministic functionality that will provide much needed competition to the existing three dominant exchange groups. The proposed functionality for PEARL Equities is similar to that offered by other equity exchanges, such as the Cboe BYX Exchange, Inc., (''BYX''), Cboe BZX Exchange, Inc., (''BZX''), Cboe EDGA Exchange, Inc., (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'', together with BYX, BZX, and EDGA, the ''Cboe Equities Exchanges''), the Investors Exchange LLC (''IEX''), the New York Stock Exchange LLC (NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and the Nasdaq Stock Market LLC (''Nasdaq''). However, other than where described below, the text of each of the proposed rules described in this proposal may differ from the rules of the other equity exchanges to provide additional specificity or to conform to the proposed structure of the PEARL Equities rule set.

The System will provide for the electronic execution of orders in equity securities as described below. All Exchange Members will be eligible to participate in PEARL Equities, provided that the Exchange has specifically authorized them to trade in the System. The System will provide a routing service for orders when trading interest is not available on PEARL Equities, and will comply with all applicable securities laws and regulations, including Regulation NMS,[3] Regulation SHO,[4] and the Plan to Address Extraordinary Market Volatility (the ''LULD Plan'').[5]

PEARL Equities Members

The Exchange will authorize any Exchange Member who meets certain enumerated qualification requirements to obtain access to PEARL Equities (any such Member, an ''Equity Member''). There will be two basic types of Equity Members: Equity Order Entry Firms (''OEF'') and Equities Market Makers. OEFs will be those Equity Members representing orders as agent on PEARL Equities and non-market maker participants conducting proprietary trading as principal. Equities Market Makers are Equity Members registered with the Exchange as Equities Market Makers.

To become an Equities Market Maker, an Equities Member is required to register by filing a registration request with the Exchange pursuant to proposed Exchange Rule 2605.[6] Registration as an Equities Market Maker will become effective on the day the registration request is submitted to the Exchange. An Equities Market Maker's registration in an issue will be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market makers registration in the issue becomes effective.

An unlimited number of Equities Market Makers may be registered in each equity security unless the number of Market Makers registered to make a market in a particular equity security should be limited whenever, in the Exchange's judgement, quotation system capacity in an equity security is not sufficient to support additional Market Makers in such equity security. The Exchange will not restrict access in any particular equity security until such time the Exchange has submitted objective standards for restricting access to the Commission for its review and approval.

Equities Market Makers will be required to electronically engage in a course of dealing to enhance liquidity available on PEARL Equities and to assist in the maintenance of a fair and orderly market. Among other things, under proposed Exchange Rule 2606(a)(1),[7] each Equities Market Maker will have to, on a daily basis, maintain a two-sided market on a continuous basis during regular market hours for each equity security in which it is registered as an Equities Market Maker (''Two-Sided Obligation'').

For each equity security in which it is registered, an Equities Market Maker must adhere to the pricing obligations set forth under proposed Exchange Rule 2606(a)(2) during Regular Trading Hours. An Equities Market Maker's pricing obligations shall not commence until the first regular way transaction is reported by the primary listing market for the security, as reported by the responsible single plan processor, and shall be suspended during a trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.600, *et seq.*

[4] 17 CFR 242.200, *et seq.*

[5] *See* Securities Exchange Act Release Nos. 67091, 77 FR 33498 (June 6, 2012) (File No. 4–631) (''Plan Approval Order'') (approving Plan as amended); *and* 85623, 84 FR 16086 (April 17, 2019) (approving, among other things, the operation of the Plan on a permanent basis).

[6] Proposed Exchange Rule 2605 is substantially similar to IEX Rule 11.150.

[7] Proposed Exchange Rule 2606 is substantially similar to IEX Rule 11.151, BYX *and* BZX Rules 11.8(d)(2)(D) *and* (E) *and* EDGA *and* EDGX Rules 11.20(d)(2)(D) *and* (E).

halt, suspension, or pause, and shall not recommence until after until the first regular way transaction is reported by the primary listing market for the security, as reported by the responsible single plan processor.

Proposed Exchange Rule 2606(a)(3) and (4) require that at the time of entry of bid (sell) interest satisfying the Two-Sided Obligation, the price of the bid (sell) interest shall be not more than the Designated Percentage, lower (higher) than the then current NBB (NBO), or if no NBB (NBO), not more than the Designated Percentage lower (higher) than the last reported sale from the responsible single plan processor. In the event that the NBB (NBO) (or if no NBB (NBO), the last reported sale) increases (decreases) to a level that will cause the bid (sell) interest of the Two-Sided Obligation to be more than the Defined Limit lower (higher) than the NBB (NBO) (or if no NBB (NBO), the last reported sale), or if the bid (sell) is executed or cancelled, the Equities Market Maker shall enter new bid (sell) interest at a price not more than the Designated Percentage lower (higher) than the then current NBB (NBO) (or if no NBB (NBO), the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

Proposed Exchange Rule 2606(a)(5) will provide that the NBBO shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

Proposed Exchange Rule 2606(a)(6) [8] provides that the ''Designated Percentage'' shall be 8% for Tier 1 NMS Stocks under the LULD Plan, 28% for Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the LULD Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 2622(b) is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the LULD Plan, 28% for Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the LULD Plan with a price less than $1.00.

Proposed Exchange Rule 2606(a)(7) [9] provides that the ''Defined Limit'' shall be 9.5% for Tier 1 NMS Stocks under the LULD Plan, 29.5% for Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the LULD Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 2622(b) is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the LULD Plan, 29.5% for Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the LULD Plan with a price less than $1.00.

Proposed Exchange Rule 2606(a)(8) will specify that Equities Market Markers will not be precluded from quoting at price levels that are closer to the NBBO than the levels required by proposed Exchange Rule 2606(a).

Proposed Exchange Rule 2606(a)(9) will specify that the minimum quotation increment for quotations of $1.00 or above in all Equity Securities shall be $0.01. The minimum quotation increment in the System for quotations below $1.00 in Equity Securities shall be $0.0001. This provision is consistent with proposed Exchange Rule 2612, described below.

Proposed Exchange Rule 2606(a)(10) will provide that the individual Market Participant Identifier (''MPID'') assigned to an Equities Market Maker to meet its Two-Sided Obligation pursuant to subparagraph (a)(1) of this Exchange Rule shall be referred to as the Equities Market Maker's ''Primary MPID.'' Equities Market Makers may request the use of additional MPIDs that shall be referred to as ''Supplemental MPIDs.'' An Equities Market Maker that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

Proposed Exchange Rule 2606(a)(11) provides that Equities Market Makers that are permitted the use of Supplemental MPIDs pursuant to proposed Exchange Rule 2606(a)(10) will be subject to the same rules applicable to the Equities Market Maker's first quotation under its Primary MPID, with one exception: The continuous two-sided quote requirement and excused withdrawal procedures described in proposed Exchange Rule 2607, described below, do not apply to Equities Market Makers' Supplemental MPIDs. Supplemental MPIDs may be identified to the Exchange as interest to satisfy an Equities Market Maker's two-sided obligation, in which case in order to be satisfactory, the Supplemental MPID's interest must be no more than the Designated Percentage from the NBBO as described and defined in proposed Exchange Rule 2606(a).

Proposed Exchange Rule 2606(b) requires that all quotations and orders to buy and sell entered into the System by Equities Market Makers be firm and automatically executable for their displayed and non-displayed size in the System by all Users. A particular Equities Market Maker's quotations may be cancelled rather than executed if designated with a Self-Trade Prevention (''STP'') modifier which is the same as that of an active opposite side order and originating from the same group type as the Equities Market Maker's orders to buy or sell, as set forth in proposed Exchange Rule 2614(f). Notwithstanding the foregoing, Equities Market Makers may not use STP modifiers to evade the firm quotation obligation.

Proposed Exchange Rule 2606(c) provides that in the event that an Equities Market Maker's ability to enter or update quotations is impaired, the Equities Market Maker shall immediately contact Exchange Trading Operations to request the withdrawal of its quotations. In the event that an Equities Market Maker's ability to enter or update quotations is impaired and the Equities Market Maker elects to remain in PEARL Equities, the Equities Market Maker shall execute an offer to buy or sell received from another Equity Member at its quotations as disseminated through the Exchange.

Equities Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange. Thus, an Equities Market Maker has a corresponding obligation to hold itself out as willing to buy and sell equities for its own account on a regular and continuous basis to justify this favorable treatment. The Exchange believes that the proposed Two-Sided Quotation requirement for all Equities Market Makers is consistent with that typically required of market makers of similar status on other national securities exchanges.

Proposed Exchange Rule 2607 provides for Equites Market Makers to withdraw their quotations. Proposed Exchange Rule 2608 provides for Equities Market Makers to voluntarily terminate their registration with the Exchange. Proposed Exchange Rule 2609 will allow the Exchange to, pursuant to the procedures set forth in Chapter IX, suspend, condition, limit,

[8] Proposed Exchange Rule 2606(a)(6) is substantially similar to IEX Rule 11.151(a)(6).

[9] Proposed Exchange Rule 2606(a)(7) is substantially similar to IEX Rule 11.151(a)(7).

prohibit or terminate the authority of an Equities Market Maker or Equity Member to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions. Each of these proposed Exchange Rules are consistent with the rules of other exchanges regarding the withdrawal or suspension of quotations and termination of a market maker's registration.[10]

Every Equity Member shall at all times maintain membership in another registered exchange that is not registered solely under Section 6(g) of the Exchange Act or with the Financial Industry Regulatory Authority (''FINRA''). OEFs that transact business with customers must at all times be members of FINRA.

Further, proposed Exchange Rule 2604 [11] provides that an Equity Member shall maintain a list of Authorized Traders (''ATs''), defined below, who may obtain access to the Trading System on behalf of the Equity Member or the Equity Member's Sponsored Participants. The Equity Member shall update the list of ATs as necessary. Equity Members must provide the list of ATs to the Exchange upon request. An Equity Member must have reasonable procedures to ensure that all ATs comply with all Exchange Rules and all other procedures related to the System. An Equity Member must suspend or withdraw a person's status as an AT if the Exchange has determined that the person has caused the Member to fail to comply with the Rules of the Exchange and the Exchange has directed the Equity Member to suspend or withdraw the person's status as an AT. An Equity Member must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Exchange to prevent the improper use or access to the systems, including unauthorized entry of information into the systems. To be eligible for registration as an AT of an Equity Member a person must successfully complete the General Securities Representative Examination (Series 7), the Securities Traders Qualification Examination (Series 57), or an equivalent foreign examination module approved by the Exchange, as defined in Interpretation and Policy .09 to Exchange Rule 3100, and any other training and/or certification programs as may be required by the Exchange.

As provided in proposed Exchange Rule 1900, Applicability, existing Exchange Rules applicable to the PEARL options market contained in Chapters I though XVIII of the Exchange Rules will apply to Equity Members unless a specific Exchange Rule applicable to the equities market (Chapters XIX through XXX of the Exchange Rules) governs or unless the context otherwise requires. Equity Members can therefore provide sponsored access to PEARL Equities to a non-Member (''Sponsored Participant'') pursuant to Exchange Rule 210, Sponsored Access to the Exchange, which is specifically set forth in proposed Exchange Rule 2606(a).[12]

Proposed Exchange Rule 2606(b) will govern conduct on PEARL Equities and provide that Equity Members and persons employed by or associated with any Equity Member, while using the facilities of PEARL Equities, shall not engage in conduct: (1) Inconsistent with the maintenance of a fair and orderly market; (2) apt to impair public confidence in the operations of the Exchange; or (3) inconsistent with the ordinary and efficient conduct of business. Pursuant to the Rules and the arrangements referred to in proposed Exchange Rule 2602, the Exchange may: Suspend an Equity Member's access to the System following a warning; or terminate an Equity Member's access to the System by notice in writing. The timing of such notice will depend on the severity of the Equity Member's misconduct.

Definitions

The Exchange proposes to define a series of terms under current Exchange Rule 100 and proposed Exchange Rule 1901, Definitions, which are to be used in proposed Chapters XIX to XXX relating to the trading of equity securities on the Exchange. Each of the terms defined in current Exchange Rule 100 and proposed Rule 1901 are either identical or substantially similar to definitions included in Rule 1.5 of the Cboe Equity Exchanges rules, NYSE Arca Rule 7.36–E(a), or IEX Rule 1.160.

Each of the definitions under proposed Exchange Rule 1901 are as follows:

- Aggressing Order. The term ''Aggressing Order'' shall mean an order to buy (sell) that is or becomes marketable against sell (buy) interest on the PEARL Equities Book. A resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the PEARL Equities Book, or when processing inbound messages.[13]
- Displayed price. The term ''displayed price'' shall mean the price at which a Limit Order is displayed, which may be different from the limit price or working price of the order.
- Equities Order Entry Firm. The term ''Equities Order Entry Firm'', ''Order Entry Firm'', or ''OEF'', shall mean those Equity Members representing orders as agent on PEARL Equities and those non-Equity Market Maker Members conducting proprietary trading.
- Equities Market Maker. The term ''Equities Market Maker'' shall mean a Member that acts as a Market Maker in Equity Securities, pursuant to Chapter XXVI.
- Equity Member. The term ''Equity Member'' is a Member authorized by the Exchange to transact business on PEARL Equities.
- Equity Securities. The term ''Equity Securities'' shall include any equity security defined as such pursuant to Rule 3a11–1 under the Exchange Act.[14]
- NBB, NBO and NBBO. With respect to the trading of Equity Securities, the term ''NBB'' shall mean the national best bid, the term ''NBO'' shall mean the national best offer, and the term ''NBBO'' shall mean the national best bid and offer.
- PEARL Equities. The term ''PEARL Equities'' shall mean PEARL Equities, a facility of MIAX PEARL, LLC.
- PEARL Equities Book. The term ''PEARL Equities Book'' shall mean the electronic book of orders in Equity Securities maintained by the Trading System.
- Protected NBB, Protected NBO and Protected NBBO. With respect to the trading of Equity Securities, the term ''Protected NBB'' or ''PBB'' shall mean the national best bid that is a Protected Quotation, the term ''Protected NBO'' or ''PBO'' shall mean the national best offer that is a Protected Quotation, and the term ''Protected NBBO'' or ''PBBO'' shall mean the national best bid and offer that is a Protected Quotation.
- Protected Bid, Protected Offer and Protected Quotation. With respect to the

[10] Proposed Exchange Rules 2607, 2608, and 2609 are substantially similar to IEX Rules 11.152, 11.153, and 11.154, respectively, except proposed Exchange Rule 2608(b) does not include the reinstatement limitations as set forth in IEX Rule 11.153(b). *See also* BYX *and* BZX Rules 11.5 through 11.8, *and* EDGA *and* EDGX Rules 11.17 through 11.20, which similarly do not include the reinstatement limitations as set forth in IEX Rule 11.153(b).

[11] Proposed Exchange Rule 2604 is substantially similar to IEX Rule 11.140 and Rule 11.4 of the Cboe Equity Exchanges.

[12] *See* proposed Exchange Rule 2602(a) (providing that, ''[t]he provisions of Rule 210, Sponsored Access to the Exchange, shall be applicable to Equity Members trading on PEARL Equities'').

[13] The defined term Aggressing Order is based on NYSE Arca Rule 7.36–E(a)(5).

[14] The defined term Equity Securities is based on NYSE Arca Rule 5.1–E(b)(2).

trading of Equity Securities, the term ''Protected Bid'' or ''Protected Offer'' shall mean a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association. The term ''Protected Quotation'' shall mean a quotation that is a Protected Bid or Protected Offer.

• Qualified Clearing Agency. The term ''Qualified Clearing Agency'' means a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act that is deemed qualified by the Exchange.

• Registered Broker or Dealer. The term ''registered broker or dealer'' means any registered broker or dealer, as defined in Section 3(a)(48) of the Exchange Act, that is registered with the Commission under the Exchange Act.

• Regular Trading Hours. The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

• Regular Trading Session. The term ''Regular Trading Session'' shall mean the time between the completion of the Opening Process or Contingent Open as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time.

• User. The term ''User'' shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602.

• UTP Exchange Traded Products. The term ''UTP Exchange Traded Products'' refers to derivative securities products that are not listed on the Exchange but that trade on the Exchange pursuant to unlisted trading privileges, including the following: Equity Linked Notes, Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities, Futures-Linked Securities, Multifactor-Index-Linked Securities, Trust Certificates, Currency and Index Warrants, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.

• UTP Security. The term ''UTP Security'' shall mean an Equity Security that is listed on a national securities exchange other than on the Exchange and that trades on PEARL Equities pursuant to unlisted trading privileges.

• Working price. The term ''Working price'' shall mean the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order.

The Exchange proposes to define additional terms under current Exchange Rule 100, Definitions, which not only relate to the trading of equity securities, but are currently utilized under the Exchange's existing rules related to options. The proposed definitions under Rule 100 will apply equally to the trading of options and equity securities on the Exchange. These proposed definitions do not alter the meaning of any Exchange Rule related to options. The Exchange simply proposes to adopt definitions of these terms under current Exchange Rule 100 to add clarity to its rules as these terms are applicable to the trading of both types of securities on the Exchange. Each of the proposed definitions under Exchange Rule 100 are as follows:

• Authorized Trader. The term ''Authorized Trader'' or ''AT'' shall mean a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her Equity Member or Sponsored Participant.

• Broker. The term ''broker'' shall have the same meaning as in Section 3(a)(4) of the Exchange Act.

• Dealer. The term ''dealer'' shall have the same meaning as in Section 3(a)(5) of the Exchange Act.

• Designated Examining Authority. The term ''designated examining authority'' shall mean a self-regulatory organization, other than the Exchange, designated by the Commission under Section 17(d) of the Exchange Act to enforce compliance by Equity Members with Exchange Rules.

• Limit price. The term ''limit price'' shall mean the highest (lowest) specified price at which a Limit Order to buy (sell) is eligible to trade.

• Timestamp. The term ''timestamp'' shall mean the effective time sequence assigned to an order for purposes of determining its priority ranking.[15]

• Trading Center. The term ''Trading Center'' shall have the same meaning as in Rule 600(b)(82) of Regulation NMS.

Execution System

The proposed equity trading system will leverage the Exchange's current state of the art technology, including its customer connectivity, messaging protocols, quotations and execution engine, order router, data feeds, and network infrastructure. Doing so minimizes the technical effort required by existing Members to begin trading equity securities on PEARL Equities. PEARL Equities will operate a fully automated, price/time priority execution model, and offer a suite of conventional order types and deterministic functionality that is designed to provide for an efficient, robust, and transparent order matching process. PEARL Equities will be operated as an ''automated market center'' within the meaning of Regulation NMS, and in furtherance thereof, will display ''automated quotations'' within the meaning of Regulation NMS. The proposed model and functionality for PEARL Equities is similar to that offered by other equity exchanges, such as the Cboe Equity Exchanges, IEX, NYSE, NYSE Arca, and Nasdaq.[16] Any proposed differences are described below and are proposed in response to industry feedback or as a means to improve upon existing functionality offered by other equity exchanges.

Like the Exchange system for options, all trading interest entered into the System will be automatically executable. Orders entered into the System that are to be displayed will either be attributed to the Equity Member or displayed anonymously. The Exchange will become a member of the Depository Trust Company (''DTC''). The System will be linked to DTC for the Exchange to transmit locked-in trades for clearance and settlement.

Hours of Operation. PEARL Equities will begin to accept orders at 7:30 a.m., Eastern Time, as described below. The System will operate between the hours of 9:30 a.m. Eastern Time and 4:00 p.m. Eastern Time,[17] with all orders being available for execution during that timeframe.

Units of Trading, Odd and Mixed Lots. Proposed Exchange Rule 2610[18] provides that the unit of trading in stocks is one (1) share. 100 shares constitutes a ''round lot,'' unless specified by the primary listing market to be fewer than 100 shares. Any amount less than a round lot shall constitute an ''odd lot,'' and any amount greater than a round lot that is not a

[15] The defined term ''timestamp'' is based on the definition of ''working time'' under NYSE Arca Rule 7.36–E(a)(4).

[16] *See* Chapter 11 of the Cboe Equity Exchanges' Rules, Chapter 11 of the IEX Rules, NYSE Rule 7P series, NYSE Arca Rule 7–E series, *and* Nasdaq 4700 series.

[17] PEARL Equities may close earlier on certain days, such as July 3, the day after Thanksgiving, and December 24.

[18] Proposed Exchange Rule 2610 is based on IEX Rule 11.180, BYX Rule 11.10, BZX Rule 11.10, EDGA Rule 11.6(s), *and* EDGX Rule 11.6(s).

multiple of a round lot shall constitute a ''mixed lot.''

Proposed Exchange Rule 2611[19] sets forth the requirements relating to odd and mixed lot trading on PEARL Equities. Proposed Exchange Rule 2611(b) further provides that round lot, mixed lot, and odd lot orders are treated in the same manner on the Exchange, provided that, the working and display price of a displayable odd lot order will be adjusted both on arrival and when resting on the PEARL Equities Book. Proposed Exchange Rule 2611(b)(1)(A) reflects standard behavior and provides that if the limit price of an odd lot order to buy (sell) is below (above) the PBO (PBB) of an away Trading Center, it will have a working and display price equal to the limit price.

Proposed Exchange Rule 2611(b)(1)(B) and (C) describes how the Exchange will re-price an odd-lot order to ensure it is not displayed on the Exchange's proprietary data feed at an unexecutable price.[20] Proposed Exchange Rule 2611(b)(1)(B) provides that if the limit price of an odd lot order to buy (sell) is at or above (below) the PBO (PBB) of an away Trading Center, it will have a working price equal to the PBO (PBB). The display price will also be adjusted to one minimum price variation lower (higher) than the PBO (PBB).

The following example describes the behavior under proposed Exchange Rule 2611(b)(1)(A) and (B). Assume the PBBO of away Trading Centers is $10.00 (100 shares) by $10.05 (100 shares) and Exchange's BBO is $10.01 (500 shares) by $10.06 (500 shares). A non-routable displayed Limit Order to buy at $10.02 (10 shares) is entered (''Order 1''). Because Order 1's limit price is below the PBO of $10.05 displayed by an away Trading Center, it is posted to the PEARL Equities Book with a working and displayed price of $10.02, its limit price. The Exchange's BBO remains unchanged. Next, a non-routable displayed Limit Order to buy at $10.05 (10 shares) is entered (''Order 2''). Because Order 2's limit price equals the PBO of $10.05 displayed by an away Trading Center, it is posted to the PEARL Equities Book with a working price of $10.05 and a displayed price of $10.04, one minimum price variation (''MPV'') less than the PBO. The Exchange's BBO remains unchanged. Assume the PBBO of away Trading Centers changes to $10.00 (100 shares) by $10.06 (100 shares). To reflect changes in the away PBBO, Order 2's displayed price is updated to $10.05 and its working price remains unchanged.

Proposed Exchange Rule 2611(b)(1)(C) provides that if the PBBO is locked or crossed and the limit price of an odd lot order to buy (sell) resting on the PEARL Equities Book is above (below) the PBO (PBB) of an away Trading Center, it will have a working and display price equal to the PBB (PBO) of the Exchange, subject to the order's limit price. The working and display price of such odd lot order will be adjusted again pursuant to proposed Exchange Rule 2611(b)(1)(A) and (B) should the PBBO unlock or uncross. Absent this proposed rule, an odd lot bid or offer could be displayed on the Exchange's proprietary data feeds at a price that appears to cross the PBBO, even if such order would not be eligible to trade at that price.

This following example describes the behavior under proposed Exchange Rule 2611(b)(1)(C) and highlights a proposed difference with similar functionality available on other equity exchanges. Assume the PBBO of away markets is $10.00 (100 shares) by $10.02 (100 shares) and further assume there are no orders on the PEARL Equities Book. A non-routable displayed Limit Order to buy at $9.99 (100 shares) is entered (''Order 1'') and is posted to the PEARL Equities Book with a working and displayed price of $9.99. The PBBO of the Exchange is now $9.99 (100 shares) by $0.00. Next, a non-routable displayed Limit Order to buy at $10.01 (10 shares) is entered (''Order 2'') and is posted to the PEARL Equities Book with a working and displayed price of $10.01. The PBBO of the Exchange remains $9.99 (100 shares) by $0.00 because Order 2 is of odd lot size and does not update the PBB. Assume the PBBO of the away markets inverts to become $10.00 (100 shares) by $9.99 (100 shares). Order 1 holds its ground at $9.99 because it is the Exchange's PBB and was locked by an away market. Order 2, however, updates to a display and working price of $9.99, the Exchange's PBB, instead of PBB of the away markets, which is $10.00.[21]

Finally, proposed Exchange Rule 2611(b)(2) provides that for an order that is partially routed to an away market on arrival, if any returned quantity of the order joins resting odd lot quantity of the original order and the returned and resting quantity, either alone or together with other odd lot sized orders, will be displayed as a new BBO, both the returned and resting quantity will be assigned a new timestamp in accordance with proposed Exchange Rules 2616, Priority of Orders, and 2617(b)(6), Priority of Routed Orders, both of which are described below.

Minimum Quotation and Trading Increments. Quotations and orders entered into the equity trading system will comply with the minimum price increments requirements of Rule 612 of Regulation NMS.[22] Proposed Exchange Rule 2612,[23] therefore, provides that bids, offers, or orders in securities traded on the Exchange shall not be made in an increment smaller than: (i) $0.01 If those bids, offers, or orders are priced equal to or greater than $1.00 per share; or (ii) $0.0001 if those bids, offers, or orders are priced less than $1.00 per share; or (iii) any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of Rule 612(a) or (b) of Regulation NMS.[24]

Usage of Data Feeds. Proposed Exchange Rule 2613[25] identifies the data feeds that the Exchange will utilize for the handling, execution and routing of orders in Equity Securities, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange Rules. The Exchange will use direct feeds as it primary source for BYX, BZX, EDGA, EDGX, Nasdaq, Nasdaq BX, Inc. (''Nasdaq BX''), Nasdaq Phlx LLC (''Nasdaq Phlx''), NYSE, NYSE American, and NYSE Arca. The Exchange will utilize data from the responsible single plan processor as its secondary source of data for these markets. The Exchange will utilize data from the responsible single plan processor as its primary source of data for FINRA's Alternative Display Facility

[19] Proposed Exchange Rule 2611 is substantially similar to NYSE Rule 7.38, NYSE Arca Rule 7.38–E, NYSE American LLC (''NYSE American'') Rule 7.38E, *and* NYSE National, Inc. (''NYSE National'') Rule 7.38.

[20] Proposed Exchange Rule 2611 would differ from NYSE Rule 7.38, NYSE Arca Rule 7.38–E, NYSE American Rule 7.38E, and NYSE National Rule 7.38 by re-pricing the odd lot order to buy (sell) to the PBB (PBO) of the Exchange when the PBB (PBO) of the Exchange was previously locked or crossed by an away Trading Center. Like the NYSE exchanges, non-displayed odd lot orders would not be subject to the above re-pricing mechanism and would be re-priced in accordance with the price sliding process for non-displayed orders described below.

[21] In such case, the Exchange understands NYSE, NYSE Arca, NYSE American, and NYSE National would price Order 2 to $10.00, the PBB of the away Trading Center. *See* NYSE Rule 7.38, NYSE Arca Rule 7.38–E, NYSE American Rule 7.38E, *and* NYSE National Rule 7.38.

[22] 17 CFR 242.612.

[23] Proposed Exchange Rule 2612 is based on IEX Rule 11.210, BYX Rule 11.11, BZX Rule 11.11, EDGA Rule 11.6(i), *and* EDGX Rule 11.6(i).

[24] 17 CFR 242.612(a) and (b).

[25] Proposed Exchange Rule 2613 is based on BYX Rule 11.26, BZX Rule 11.26, EDGA Rule 13.4, EDGX Rule 13.4, NYSE Rule 7.37(e), *and* Nasdaq Rule 4759.

(''ADF''), IEX, the Long Term Stock Exchange, Inc., NYSE Chicago, and NYSE National.

Proposed Exchange Rule 2613(b) provides that the Exchange may adjust its calculation of the PBBO and NBBO based on information about orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange. Proposed Exchange Rule 2619(c) provides that the responsible single plan processor will be the Primary Source of trade and administrative messages such as Limit-up Limit-Down Price Bands, Market-Wide Circuit Breaker decline and status messages, Regulation SHO state messages, halts and resumes, and last sale information.

Time-In-Force Instructions. The proposed System will support two time-in-force instructions, Immediate-or-Cancel (''IOC'') and Regular Hours Only (''RHO''). Equity Members entering orders in to the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or unexecuted portion thereof) is cancelled. A description of the time-in-force instructions available on the System will be described under proposed Exchange Rule 2614(b).

Immediate-or-Cancel (''IOC''). IOC will be a time-in-force instruction that provides for the order to be executed in whole or in part as soon as such order is received. The portion not executed immediately on the Exchange or another Trading Center is treated as cancelled and is not posted to the PEARL Equities Book. Limit Orders with a time-in-force of IOC that are not designated as ''Do Not Route'' and that cannot be executed in accordance with PEARL Equities Rule 2617(a)(4) on the System when reaching the Exchange will be eligible for routing away pursuant to PEARL Equities Rule 2617(b).

Regular Hours Only (''RHO''). RHO will be a time-in-force instruction that designates the order for execution only during Regular Trading Hours, which includes the Opening Process for Equity Securities.

Order Type Modifiers. The proposed System will support the following conventional order type modifiers: Do Not Route, Post Only, Displayed, Non-Displayed, Attributable, Non-Attributable, and Intermarket Sweep Orders (''ISO''). ISOs will be described under proposed Exchange Rule 2614(d) and the remaining order type modifiers will be described under proposed Exchange Rule 2614(c). A description of which order types each modifier is compatible with will be set forth under proposed Exchange Rule 2614(a) and is described below. The characteristics and functionality of each of these order type modifiers is identical to what is currently approved for the other equity exchanges. However, as mentioned above, the text of each of the proposed rules may differ from the descriptions of similar functionality in the rules of the other equity exchanges only to the extent to provide additional specificity and/or to conform the proposed structure of the PEARL Equities rule set.

Do Not Route. An order designated as Do Not Route is a non-routable order that will be ranked and executed on the PEARL Equities Book pursuant to proposed Exchange Rule 2616 and proposed Exchange Rule 2617(a)(4) or cancelled.[26] Unless otherwise instructed by the User, an order designated as Do Not Route will be subject to the price sliding processes set forth in proposed Exchange Rule 2614(g) described below.

Post Only. An order designated as Post Only is a non-routable order that will be ranked and executed on the PEARL Equities Book pursuant to proposed Exchange Rule 2616 and proposed Exchange Rule 2617(a)(4).[27] An order designated as Post Only will only remove liquidity from the PEARL Equities Book when: (A) The order is for a security priced below $1.00; or (B) the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the PEARL Equities Book and subsequently provided liquidity including the applicable fees charged or rebates paid.[28]

To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the PEARL Equities Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

Like an order designated as Do Not Route, an order designated as Post Only will be subject to the price sliding processes set forth in proposed Exchange Rule 2614(g) described below, unless otherwise instructed by the User.

Displayed. ''Displayed'' is an instruction a User may attach to an order stating that the order is to be displayed by the System on the PEARL Equities Book. Unless the User elects otherwise, all orders eligible to be displayed on the PEARL Equities Book will be automatically defaulted by the System to Displayed.[29]

Non-Displayed. ''Non-Displayed'' is an instruction the User may attach to an order stating that any part of the order is not to be displayed by the System on the PEARL Equities Book.[30]

Attributable. ''Attributable'' is an instruction to include the User's market participant identifier (''MPID'') with an order that is designated for display (price and size) on an Exchange proprietary data feed.

Non-Attributable. ''Non-Attributable'' is an instruction on an order that is designated for display (price and size) on an Exchange proprietary data feed to display that order on an anonymous basis.[31]

ISOs. ISO is an order instruction that may be attached to an incoming Limit

[26] The Do Not Route modifier is based on the rules of the Cboe Equity Exchanges. *See* BYX *and* BZX Rules 11.9(c)(4) *and* EDGA *and* EDGX Rules 11.6(n)(3).

[27] The Post Only modifier is based on the rules of the Cboe Equity Exchanges. *See* BYX *and* BZX Rules 11.9(c)(6) *and* EDGA *and* EDGX Rules 11.6(n)(4).

[28] As is the case on Nasdaq, the Cboe Equity Exchanges, and as proposed by Members Exchange, Inc. (''MEMX''), an incoming order designated as Post Only entered with a limit price that would lock or cross a resting contra-side Midpoint Peg Order resting on the PEARL Equities Book may post and display at the locking or crossing price (if the difference in price between the incoming order designated as Post Only and the resting midpoint is less than the forgone net rebate/fee). *See* EDGA *and* EDGX Rules 11.6(n)(4), *and* BYX and BZX Rules 11.9(c)(6) (providing that a Post Only order will remove contra-side liquidity from the book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided). *See* proposed MEMX Rule 11.6(l)(2) (proposing to adopt Post Only functionality identical to that of the Cboe Equity Exchanges). *See also* Nasdaq Rule 4702(b)(4)(A) (providing that if the adjusted price of the Post-Only Order would lock or cross a non-displayed price on the Nasdaq Book, the Post-Only Order will be posted . . .; provided, however, the Post-Only Order will execute if. . . it is priced at $1.00 or more and the value of price improvement associated with executing against an Order on the Nasdaq Book (as measured against the original limit price of the Order) equals or exceeds $0.01 per share). If such a lock or cross exists, new incoming orders may remove liquidity against the locked or crossed midpoint orders, but only at a price equal to the NBBO midpoint consistent with the Exchange's proposed price priority scheme under proposed Exchange Rule 2616. *See also* Nasdaq and BX Post-Only Functionality Modifications, *available at https://www.nasdaqtrader.com/content/newsalerts/2016/postonlymodifications.pdf.*

[29] The Displayed modifier is based on the rules EDGA and EDGX. *See* EDGA *and* EDGX Rules 11.6(e)(1).

[30] The Non-Displayed modifier is based on the rules EDGA and EDGX. *See* EDGA *and* EDGX Rules 11.6(e)(2).

[31] The Attributable and Non-Attributable modifiers are based on rules of the Cboe Equity Exchanges. *See* BYX *and* BZX Rules 11.9(c)(13) *and* (14), *and* EDGA *and* EDGX Rules 11.6(a).

Order. The operation of ISOs will be described in proposed Exchange Rule 2614(d) and is consistent with the description of the ISO exception in Rules 600(b)(30) and 611(b)(5) of Regulation NMS.[32] Proposed Exchange Rule 2614(d) provides that the System will accept incoming ISOs (as such term is defined in Rule 600(b)(31) of Regulation NMS). The Exchange does not intend to initially support the outbound routing of orders designated as ISO on behalf of Equity Members. Therefore, proposed Exchange Rule 2614(d) provides that ISOs are not eligible for routing pursuant to Exchange Rule 2617(b).

To be eligible for treatment as an ISO, the order must be: (A) A Limit Order; (B) marked ''ISO''; and (C) the User entering the order must simultaneously route one or more additional Limit Orders marked ''ISO,'' as necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security as set forth below. Such orders, if they meet the requirements of the foregoing sentence, may be immediately executed at one or multiple price levels in the System without regard to Protected Quotations at away Trading Centers consistent with Regulation NMS (*i.e.,* may trade through such quotations and will not be rejected or cancelled if it will lock, cross, or be marketable against an away Trading Center).

An ISO may include a time-in-force of IOC or RHO and the operation of an ISO will differ depending on the time-in-force selected. An ISO that includes a time-in-force of IOC will immediately trade with contra-side interest on the PEARL Equities Book up to its full size and limit price and any unexecuted quantity will be immediately cancelled. An ISO that includes a time-in-force of RHO, if marketable on arrival, will also immediately trade with contra-side interest on the PEARL Equities Book up to its full size and limit price. However, any unexecuted quantity of a RHO ISO will be displayed at its limit price on the PEARL Equities Book and may lock or cross a Protected Quotation that was displayed at the time of arrival of the RHO ISO.[33]

A User entering an ISO with a time-in-force of IOC represents that such User has simultaneously routed one or more additional Limit Orders marked ''ISO,'' if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is *superior to* the ISO's limit price. A User entering an ISO with a time-in-force of RHO makes the same representation but further represents that it simultaneously routed one or more additional Limit Orders marked ''ISO,'' if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is *equal* to its limit price.

Proposed Exchange Rule 2614(d)(2) specifies that the Exchange will rely on the marking of an order as an ISO order when handling such order, and thus, it is the entering Equity Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation NMS relating to ISOs.

Re-Pricing Mechanisms. Like other equity exchanges, the System proposes to offer re-pricing mechanisms to Users of PEARL Equities to comply with Rule 610(d) of Regulation NMS and Rule 201 of Regulation SHO. These re-pricing mechanisms are Display Price Sliding, Non-Display Order Price Sliding, and Short Sale Price Sliding. Under Display Price Sliding and Short Sale Price Sliding, Users will be able to select between either single price sliding or multiple price sliding. The Exchange will offer Display Price Sliding (including multiple Display Price Sliding) and Non-Displayed Order Price Sliding (including multiple Non-Displayed Order Price Sliding) to comply with locked/crossed market and trade through restriction of Regulation NMS. The Exchange will offer Short Sale Price Sliding to comply with the tick provisions of Rule 201 of Regulation SHO.

Each of the Exchange's proposed re-pricing mechanisms is identical to functionality on other equity exchanges. However, as mentioned above, the text of each of the proposed rules may differ from the descriptions of similar functionality in the rules of the other equity exchanges only to the extent to provide additional specificity and/or to conform the proposed structure of the PEARL Equities rule set. The Exchange's re-pricing mechanisms will be described under proposed Exchange Rule 2614(g).

Display Price Sliding. Display Price Sliding is designed to prevent the display of a quotation that would lock or cross an away Trading Center in violation of Rule 610(d) of Regulation NMS.[34] Proposed Exchange Rule 2614(g)(1)(A) provides that an order to buy (sell) designated as Displayed that, if displayed at its limit price on the PEARL Equities Book upon entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing the PBO (PBB) of an away Trading Center will be assigned a working price equal to the PBO (PBB) and a displayed price one (1) minimum price variation below (above) the current PBO (PBB). A User may elect to have the System only apply the Display Price Sliding Process to the extent a display-eligible order to buy (sell) at the time of entry would create a violation of Rule 610(d) of Regulation NMS by locking the PBO (PBB) of an away Trading Center. For Users that select this order handling, any order to buy (sell) will be cancelled if, upon entry, such order would create a violation of Rule 610(d) of Regulation NMS by crossing the PBO (PBB) of an away Trading Center.

Proposed Exchange Rule 2614(g)(1)(B) provides that an order subject to the Display Price Sliding Process will retain its original limit price irrespective of the working and displayed price assigned to the order. In the event the PBBO changes such that an order to buy (sell) subject to the Display Price Sliding Process would no longer lock or cross the PBO (PBB) of an away Trading Center, the order will receive a new timestamp and will be assigned a working and displayed price at the most aggressive permissible price. All orders that are assigned new working and displayed prices pursuant to the Display Price Sliding Process will retain their priority as compared to other orders subject to the Display Price Sliding Process based upon the time such orders were initially received by the Exchange. Following the initial ranking and display of an order subject to the Display Price Sliding Process, an order will only be assigned a new working and displayed price to the extent it achieves a more aggressive price, provided, however, that the Exchange will assign an order a working price equal to the displayed price of the order in the event such order's displayed price is locked or crossed by a Protected Quotation of an away Trading Center. Such event will not result in a change in priority for the order at its displayed price.

[32] 17 CFR 242.600(b)(30), 611(b)(5).

[33] Orders with a time-in-force of Day or RHO both expire at the end of Regular Trading Hours. Because the Exchange will not initially offer a time-in-force of Day, it proposes to handle ISOs with a time-in-force of RHO the same as Day ISOs are handled on other equity exchanges.

[34] Display Price Sliding would operate identically to Display Price Sliding on the Cboe Equity Exchanges. *See* BYX *and* BZX Rules 11.9(g)(1) *and* EDGA *and* EDGX Rules 11.6(l)(1)(B). The only difference is that the proposed text describing the operation of Display Price Sliding in proposed Exchange Rule 2614(g)(1) is written to provide additional specificity regarding its operation by, among other things, adding directional references to describe how orders subject to Display Price Sliding are to be handled.

Proposed Exchange Rule 2614(g)(1)(C) provides that the working and displayed prices of an order subject to the Display Price Sliding Process may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing PBBO. Unless otherwise instructed by the User, the System will only adjust the working and displayed prices of an order upon entry and then the displayed price one additional time following a change to the prevailing PBBO. The working and displayed prices of orders subject to the optional multiple price sliding process will be adjusted, as permissible, based on changes to the prevailing PBBO.

Proposed Exchange Rule 2614(g)(1)(D) provides that any display-eligible order to buy (sell) designated as Post Only that locks or crosses the PBO (PBB) displayed by the Exchange upon entry will be executed as set forth in Exchange Rule 2614(c)(2) or cancelled. Depending on User instructions, a display-eligible order to buy (sell) designated as Post Only that locks or crosses the PBO (PBB) displayed by an away Trading Center upon entry will be subject to the Display Price Sliding Process. In the event the PBBO changes such that an order designated as Post Only subject to the Display Price Sliding Process will be assigned a working price at which it could remove displayed liquidity from the PEARL Equities Book, the order will be executed as set forth in proposed Exchange Rule 2614(c)(2) or cancelled.

Finally, Proposed Exchange Rule 2614(g)(1)(E) provides that orders to buy (sell) designated as Post Only will be permitted to post and be displayed opposite the working price of orders to sell (buy) subject to the Display Price Sliding Process. In the event an order subject to the Display Price Sliding Process is ranked on the PEARL Equities Book with a working price equal to an opposite side order displayed by the Exchange, it will be subject to processing as set forth in proposed Exchange Rule 2617(a)(4).

Non-Displayed Price Sliding. Non-Displayed Price Sliding is designed to avoid potentially trading through Protected Quotations of an away Trading Center in violation of Rule Regulation NMS.[35] Proposed Exchange Rule 2614(g)(2) provides a non-displayed, non-routable order to buy (sell) that, upon entry, would cross the PBO (PBB) of an away Trading Center will be assigned a working price by the System equal to the PBO (PBB). In the event the PBO (PBB) changes such that the working price of a non-displayed, non-routable order to buy (sell) resting on the PEARL Equities Book would again cross the PBO (PBB) of an external market, the working price of the non-displayed order to buy (sell) will be adjusted by the System to be equal to the updated PBO (PBB) and will receive new timestamp. In the event a non-displayed, non-routable order to buy (sell) has been re-priced by the System pursuant to proposed Exchange Rule 2614(g)(2), such non-displayed order to buy (sell) will not be re-priced by the System unless it again crosses the PBO (PBB) of an away Trading Center or it achieves a more aggressive price, due to an update to the PBO (PBB) of an away Trading Center.[36] Unlike under Display Price Sliding, non-displayed, non-routable buy (sell) orders will be re-priced not only upon entry, but each time the price of the order crosses the PBO (PBB) of an away Trading Center. This proposed multiple price sliding functionality under Non-Displayed Price Sliding would be mandatory, and not optional behavior.

Short Sale Price Sliding Process. Short Sale Price Sliding is designed to comply with Rule 201 of Regulation SHO by re-pricing short sale orders to a price above the NBB.[37] Proposed Exchange Rule 2614(g)(3)(A) provides that a short sale order that, at the time of entry, could not be executed or displayed at its limit price due to a short sale price test restriction under Rule 201 of Regulation SHO (''Short Sale Period'') will be assigned a working and displayed price by the System equal to one (1) minimum price variation above the current NBB (''Permitted Price''). Unless otherwise instructed by the User, the System will only adjust the working and displayed price of a short sale order upon entry. To reflect declines in the NBB during a Short Sale Period, a User may elect that the System continue to adjust the working and displayed price of a displayed short sale order to the Permitted Price down to the order's original limit price.

Proposed Exchange Rule 2614(g)(3)(B) provides that in the event the NBB changes during a Short Sale Period such that the working price of a non-displayed short sale order would lock or cross the NBB, the order will be assigned a working price by the System equal to the Permitted Price and receive a new timestamp. To reflect changes in the NBB during a Short Sale Period, the System will continue to adjust the working price of a non-displayed short sale order subject to the order's limit price.

Proposed Exchange Rule 2614(g)(3)(C) provides that during a Short Sale Period, a short sale order will be executed and displayed without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current NBB. Short sale orders that are entered into the Exchange prior to the Short Sale Period but are not displayed will be adjusted to a Permitted Price.[38] Proposed Exchange Rule 2614(g)(3)(D) provides that short sale orders marked ''short exempt'' will not be subject to the Short Sale Price Sliding Process.

Proposed Exchange Rule 2614(g)(3)(E) provides that during a Short Sale Period, a short sale order will be subject to the Short Sale Price Sliding Process, even if such order is also eligible for the Display Price Sliding Process.

Order Types. The proposed System will make available to Equities Members the following three order types: Limit Orders, Market Orders, and Midpoint Peg Orders. A description of the order types available on the System will be described under proposed Exchange Rule 2614(a). Proposed Exchange Rule 2614 provides that order, instruction, and parameter combinations which are disallowed by the Exchange or incompatible by their terms, will be rejected, ignored, or overridden by the Exchange, as determined by the Exchange to facilitate the most orderly handling of User instructions. For example, a Limit Order that includes a time-in-force of IOC and a Post Only instruction will be rejected.

The characteristics and functionality of each of these order types is identical or substantially similar to what is currently approved for the other equity exchanges. However, as mentioned above, the text of each of the proposed

[35] Non-Displayed Price Sliding would operate identically to Non-Displayed Price Sliding on the Cboe Equity Exchanges. *See* BYX *and* BZX Rules 11.9(g)(4) *and* EDGA *and* EDGX Rules 11.6(l)(3). The only difference is that the proposed text describing the operation of Non-Displayed Price Sliding in proposed Exchange Rule 2614(g)(2) is written to provide additional specificity regarding its operation by, among other things, adding directional references to describe how orders subject to Non-Displayed Price Sliding are to be handled.

[36] Repricing non-displayed orders subject to Non-Displayed Price Sliding to a more aggressive price is consistent with standard functionality and the proposed Display Price Sliding process. This specificity is not included in the rules of the Cboe Equity Exchanges but is in IEX rules. *See* IEX Rule 11.190(h)(2).

[37] Short Sale Price Sliding would operate identically to Short Sale Price Sliding on the Cboe Equity Exchanges. *See* BYX *and* BZX Rules 11.9(g)(5) *and* EDGA *and* EDGX Rules 11.6(l)(2). The only difference is that the proposed text describing the operation of Short Sale Price Sliding in proposed Exchange Rule 2614(g)(3) is written to provide additional specificity regarding its operation.

[38] *See* NYSE Arca Rule 7.16(f)(6).

rules may differ from the descriptions of similar functionality in the rules of the other equity exchanges only to the extent to provide additional specificity and to conform the proposed structure of the PEARL Equities rule set.

Limit Orders. Proposed Exchange Rule 2614(a)(1) [39] provides that Limit Orders are orders to buy or sell a stated amount of a security at a specified price or better. A ''marketable'' Limit Order to buy (sell) will trade with all orders to sell (buy) priced at or below (above) the PBO (PBB) for the security. Once no longer marketable, the Limit Order will be ranked on the PEARL Equities Book pursuant to proposed Exchange Rule 2616, described below.

Proposed Exchange Rule 2614(a)(1) will set forth which order type modifiers are compatible with Limit Orders. First, an incoming Limit Order may be designated as ISO. A Limit Order may also be displayed or non-displayed. A Limit Order will be displayed on the PEARL Equities Book unless the User elects that the Limit Order be non-displayed.[40] A Limit Order may be entered as an odd lot, round lot, or mixed lot and include a time-in-force of IOC or RHO. A Limit Order with a time-in-force of RHO is eligible to participate in the Opening Process described under proposed Exchange Rule 2615. A Limit Order is eligible to participate in the Regular Trading Session.

A Limit Order may be designated as Post Only or Do Not Route. Further, a Limit Order that is designated as ISO and includes a time-in-force of RHO may also be designated as Post Only. Unless designated as Post Only or Do Not Route, a marketable Limit Order to buy (sell) will be eligible to be routed away to prices equal to or higher (lower) than the PBO (PBB) pursuant to proposed Exchange Rule 2717(b) only after trading with orders to sell (buy) on the PEARL Equities Book at each price point.

Proposed Rule 2614(a)(1) will also describe default behavior for re-pricing Limit Orders to comply with Rule 610 of Regulation NMS,[41] Rule 201 of Regulation SHO,[42] and the LULD Plan.[43] Each of these re-pricing options are described in detail further below.

To comply with Rule 610 of Regulation NMS, a non-routable Limit Order to buy (sell) that, if displayed at its limit price on the PEARL Equities Book upon entry, would lock or cross the PBO (PBB) of an away Trading Center will be re-priced pursuant to the Display Price Sliding instruction, unless the User affirmatively elects to have the order immediately cancelled. A non-routable Limit Order to buy (sell) with a limit price that would cross the PBO (PBB) of an away Trading Center upon entry will not execute at a price that is higher (lower) than the PBO (PBB).

To avoid potentially trading through the PBBO of an away Trading Center, a non-displayed Limit Order to buy (sell) that, if posted to the PEARL Equities Book, would cross the PBO (PBB) of an away Trading Center will be re-priced pursuant to the Non-Displayed Order Price Sliding Process.[44]

To comply with Rule 201 of Regulation SHO, when a Short Sale Period [45] is in effect, a Limit Order to sell that is designated as short and cannot be executed or displayed on the PEARL Equities Book at its limit price pursuant to Rule 201 of Regulation SHO will be re-priced to a Permitted Price pursuant to the Short Sale Price Sliding Process, unless the User affirmatively elects to have the order immediately cancelled. During a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), the System will immediately cancel any portion of an incoming Limit Order designated as ISO and short that includes a time-in-force instruction RHO that cannot be executed or displayed at its limit price at the time of entry pursuant to Rule 201 of Regulation SHO.[46]

To comply with the LULD Plan, a Limit Order to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be re-priced pursuant to proposed Exchange Rule 2622(e) (described below), unless the User affirmatively elects to have the order immediately cancelled.

The Exchange also proposes to offer Limit Order Price Protection which will provide for the cancellation of Limit Orders priced too far away from a specified reference price at the time the order first becomes eligible to trade.[47] A Limit Order entered before Regular Trading Hours that becomes eligible to trade during Regular Trading Hours will be subject to Limit Order Price Protection at the time Regular Trading Hours begins.[48]

A Limit Order to buy (sell) will be rejected if it is priced at or above (below) a specified dollar value and percentage away from the following: (1) The PBO for Limit Orders to buy, the PBB for Limit Orders to sell; (2) if the PBO or PBB is unavailable, the consolidated last sale price disseminated during the Regular Trading Hours on trade date; (3) if the PBO, PBB, and a consolidated last sale price are unavailable, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events. This differs from Limit Order Price Protection offered by Nasdaq,[49] which only utilizes the PBBO as a reference price, and the NYSE,[50] which only calculates reference prices based on the corresponding ''numerical guideline'' percentages set forth in NYSE Rule 7.10(c)(1), Clearly Erroneous Executions. The Exchange believes this difference is reasonable because utilizing a waterfall of reference prices should result in specified percentages that are more reflective of the current trading environment for the security and provide an alternative reference price when the NBBO and/or last sale price are unavailable.

Also unlike Limit Order Price Protection offered by NYSE and Nasdaq, Equity Members will be able to customize the specified dollar and percentages on a per session basis. If an Equity Member does not provide PEARL Equities specified dollar values or percentages for their order(s), default specified dollar and percentages established by the Exchange will be applied. The default specified dollar and percentages will be posted to the Exchange's website and the Exchange will announce any changes to those dollar and percentages via a Regulatory Circular. The Exchange believes this difference is also reasonable because it provides Equity Members with greater flexibility in establishing protections that better reflect their risk profile.

[39] The description of Limit Orders under proposed Exchange Rule 2614(a)(1) is based on EDGA and EDGX Rules 11.8(b).

[40] The Exchange does not propose to offer reserve quantity functionality for Limit Orders at this time. Reserve functionality is commonly understood to allow a Limit Order to have both a displayed and non-displayed quantity. *See, e.g.,* EDGA *and* EDGX Rules 11.6(m).

[41] 17 CFR 242.610.

[42] 17 CFR 242.201.

[43] *See supra* note 5.

[44] Unlike the Cboe Equity Exchanges, PEARL Equities does not proposes to provide Users with the option to automatically cancel a non-displayed order that is to be repriced pursuant to the Non-Displayed Price Sliding Process. *See* EDGA and EDGX Rules 11.8(b)(12).

[45] A Short Sale Period is the time during which a displayable short sale order, at the time of entry, could not be executed or displayed at its limit price due to a short sale price test restriction under Rule 201 of Regulation SHO. 17 CFR 201. *See also* proposed Exchange Rule 2614(g)(3)(A).

[46] *See* EDGA *and* EDGX Rule 11.8(c)(6).

[47] The Exchange's proposed Limit Order Price Protection is based on NYSE Rule 7.31(a)(2)(B) *and* Nasdaq Rule 4757(c).

[48] Further, a Limit Order in a security that is subject to a trading halt will become first eligible to trade when the halt is lifted and continuous trading has resumed.

[49] Nasdaq Rule 4757(c).

[50] NYSE Rule 7.31(a)(2)(B).

Limit Order Price Protection thresholds for buy (sell) orders that are not entered at a permissible MPV for the security, as defined in proposed Exchange Rule 2612, will be rounded down (up) to the nearest price at the applicable MPV.

Market Orders. Proposed Rule 2614(a)(2)[51] provides that a Market Order is an order to buy (sell) a stated amount of a security that is to be executed at the PBO (PBB) or better upon entry. A Market Order shall not trade through a Protected Quotation. The System will only execute a Market Order upon entry and, if eligible, route the Market Order to an away Trading Center. The System will never post a Market Order to the PEARL Equities Book, unlike as is done by other national securities exchanges.[52]

A Market Order may be entered as an odd, round, or mixed lot. A Market Order may only include a time-in-force of IOC. A Market Order with a time-in-force of RHO will be rejected. A Market Order is not eligible to participate in the Opening Process under proposed Exchange Rule 2615 described below. A Market Order is eligible to participate in the Regular Trading Session.

A Market Order may also be designated as Do Not Route. For a Market Order that is not designated as Do Not Route, any portion of that Market Order that cannot be executed in accordance with Rule 2617(a)(4) upon entry will be eligible to be routed away pursuant to Rule 2617(b). Any returned quantity of a routed Market Order will be immediately cancelled. A Market Order that is designated as Post Only will be rejected. A Market Order that is designated as Do Not Route will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 2617(a)(4). Equity Members may also elect that their Market Order to buy (sell) be cancelled if the PBO (PBB) an away Trading Center is not available upon entry.

The System will cancel a non-routable Market Order that cannot be executed at a price that complies with Rule 201 of Regulation SHO and the Limit-Up Limit-Down Plan. During a Short Sale Period, a short sale Market Order designated as Do Not Route that cannot be executed at a Permitted Price or better upon entry will be cancelled. This may occur when there are no orders to buy priced above the NBB resting on the PEARL Equities Book against which the incoming Market Order to sell could execute against in compliance with Rule 201 of Regulation SHO.

Further, any portion of a Market Order to buy (sell) will be cancelled if it cannot be executed because at the time it is received by the System the NBO (NBB) is greater (less) than the Upper (Lower) Price Band in accordance with the LULD Plan. In such case, a Market Order to buy (sell) cannot execute against the NBO (NBB) because the NBO (NBB) is outside of the applicable Price Band and, therefore, not available for execution.

Midpoint Peg Orders. Proposed Rule 2614(a)(3)[53] provides that a Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order to buy (sell) with a limit price that is equal to or higher (lower) than the midpoint of the PBBO will be assigned a working price at the midpoint of the PBBO and may execute at the midpoint of the PBBO or better subject to its limit price. A Midpoint Peg Order to buy (sell) with a limit price that is lower (higher) than the midpoint of the PBBO will be assigned a working price equal to its limit price and may execute at its limit price or better.

An Aggressing Midpoint Peg Order to buy (sell) will trade with resting orders to sell (buy) with a working price at or below (above) the midpoint of the PBBO at the working price of the resting orders.[54] Resting Midpoint Peg Orders to buy (sell) will trade at the midpoint of the PBBO against all Aggressing Orders to sell (buy) priced at or below (above) the midpoint of the PBBO.[55]

A Midpoint Peg Order will be accepted but will not be eligible for execution when the PBB or PBO is not available, the PBBO is crossed, and, if instructed by the User, when the PBBO is locked. A Midpoint Peg Order that is eligible for execution when the PBBO is locked will be executable at the locking price.[56] A Midpoint Peg Order will become eligible for execution and receive a new timestamp when the PBB and/or PBO both become available, or the PBBO unlocks or uncrosses and a new midpoint of the PBBO is established. In such case, pursuant to proposed Exchange Rule 2616, all such Midpoint Peg Orders will retain their priority as compared to each other based upon the time priority of such orders immediately prior to being deemed not eligible for execution as set forth above.[57]

A Midpoint Peg Order may include a time-in-force of IOC or RHO. A Midpoint Peg Order with a time-in-force of RHO is eligible to participate in the Opening Process under proposed Exchange Rule 2615 described above. A Midpoint Peg Order is eligible to participate in the Regular Trading Session. A Midpoint Peg Order may be entered as an odd lot, round lot, or mixed lot. Midpoint Peg Orders are not eligible for routing pursuant to Exchange Rule 2617(b). A Midpoint Peg Order may be designated as Post Only.

Cancel/Replace Messages. Like other equity exchanges, the Exchange will allow a User to cancel or replace their existing order resting on the PEARL Equities Book. However, orders may only be cancelled or replaced if the order has a time-in-force term other than IOC and if the order has not yet been executed in full. If an order has been routed to another Trading Center, the order will be placed in a ''Pending'' state until the routing process is completed. Executions that are completed when the order is in the ''Pending'' state will be processed normally. Further, only the price, sell long, sell short, or short exempt indicator, and size terms of the order may be changed by a Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. No cancellation or replacement of an order will be effective until such message has been received and processed by the System. The Exchange's proposed cancel/replace functionality will be described under proposed Exchange Rule 2614(e).

Self-Trade Protection Modifiers. Like PEARL Options and other equity exchanges, the Exchange will allow Equity Members to use STP modifiers. Any order designated with an STP modifier will be prevented from executing against a contra-side order also designated with an STP modifier and originating from the same MPID, Exchange Member identifier, or trade group identifier (any such identifier, a ''Unique Identifier''). The Exchange proposes to offer the following four (4) STP modifiers to Equity Members:

[51] The description of Market Orders under proposed Exchange Rule 2614(a)(2) is based on EDGA and EDGX Rules 11.8(a).

[52] *See, e.g.,* EDGA *and* EDGX Rules 11.8(a)(4) (providing for the posting of Market Orders when the NBO (NBB) is greater (less) than the Upper (Lower) Price Band or when an Short Sale Circuit Breaker is in effect). *See also* NYSE Rule 7.31(a)(1).

[53] The description of Midpoint Peg Orders under proposed Exchange Rule 2614(a)(3) is based on EDGA Rule 11.8(d), EDGX Rule 11.8(d), NYSE Rule 7.31(d)(3), and NYSE Arca Rule 7.31–E(d)(3).

[54] *See* NYSE Rule 7.31(d)(3)(C).

[55] *Id.*

[56] *See* IEX Rule 11.190(h)(3)(C)(i) (stating that in the event the market becomes locked, the Exchange shall consider the midpoint price to be equal to the locking price).

[57] Describing when a Midpoint Peg Orders would not be eligible for execution is based on NYSE Rule 7.31(d)(3) and NYSE Arca Rule 7.31–E(d)(3).

Cancel Newest, Cancel Oldest, Decrement and Cancel, and Cancel Both. The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. The Exchange's proposed STP modifiers will be described under proposed Exchange Rule 2614(f).

Cancel Newest. An order marked with the Cancel Newest modifier will not execute against a contra-side order marked with any STP modifier originating from the same Unique Identifier. The order with the most recent time stamp marked with the Cancel Newest modifier will be cancelled back to the originating User(s). The contra-side order with the older timestamp marked with an STP modifier will remain on the PEARL Equities Book.

Cancel Oldest. An order marked with the Cancel Oldest modifier will not execute against a contra-side order marked with any STP modifier originating from the same Unique Identifier. The order with the older time stamp marked with the STP modifier will be cancelled back to the originating User(s). The contra-side order with the most recent timestamp marked with the STP modifier will remain on the PEARL Equities Book.

Decrement and Cancel. An order marked with the Decrement and Cancel modifier will not execute against contra-side interest marked with any STP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User(s). If both orders are not equivalent in size, the equivalent size will be cancelled back to the originating User(s) and the larger order will be decremented by the size of the smaller order, with the balance remaining on the PEARL Equities Book.

Cancel Both. An order marked with the Cancel Both modifier will not execute against contra-side interest marked with any STP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User(s).

Opening Procedures. The Exchange will open trading in Equities Securities at the start of Regular Trading Hours and following a halt by matching buy and sell orders at the midpoint of the NBBO, as described below. The Exchange's opening process will be described under proposed Exchange Rule 2615,[58] which provides that prior to the beginning of Regular Trading Hours,[59] Users who wish to participate in the Opening Process may enter orders to buy or sell that are designated as RHO. Orders cancelled before the Opening Process will not participate in the Opening Process.

Only orders that include a time-in-force of RHO may participate in the Opening Process. Orders designated as Post Only, ISOs, and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. As described above, because Market Orders may only include a time-in-force of IOC, they are not eligible to participate in the Opening Process. Meanwhile, Limit Orders and Midpoint Peg orders that include a time-in-force of RHO are eligible to participate in the Opening Process. Like PEARL Options, all STP modifiers, as defined in proposed Exchange Rule 2614(f), will be honored during the Opening Process.[60]

Proposed Exchange Rule 2615(b) provides that during the Opening Process, the Exchange attempts to match eligible buy and sell orders at the midpoint of the NBBO, the calculation of which is described below. All orders eligible to trade at the midpoint will be processed in time sequence, beginning with the order with the oldest timestamp. The Opening Process will conclude when no remaining orders, if any, can be matched at the midpoint of the NBBO. At the conclusion of the Opening Process, the unexecuted portion of orders that were eligible to participate in the Opening Process will be placed on the PEARL Equities Book in time sequence, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order.

Proposed Exchange Rule 2615(c) will describe how the Exchange calculates the midpoint of the NBBO. When the primary listing exchange is the NYSE or NYSE American, the Opening Process will be priced at the midpoint of the: (i) First NBBO subsequent to the first reported trade and first two-sided quotation on the primary listing exchange after 9:30:00 a.m. Eastern Time; or (ii) then prevailing NBBO when the first two-sided quotation is published by the primary listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the primary listing exchange within one second of publication of the first two-sided quotation by the primary listing exchange. For any other primary listing exchange, such as Nasdaq, Arca, and BZX, the Opening Process will be priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the primary listing exchange after 9:30:00 a.m. Eastern Time.

If the conditions to establish the price of the Opening described above do not occur by 9:45:00 a.m. Eastern Time, the Exchange may conduct a Contingent Open and match all orders eligible to participate in the Opening Process at the midpoint of the then prevailing NBBO.[61] The Exchange believes matching orders at the midpoint of the NBBO as part of the Contingent Open provides consistent order handling to Users that wish to participate in the PEARL Equities Opening Process by executing their eligible orders at the midpoint of the NBBO, regardless of whether the opening process occurs at or near 9:30 a.m. Eastern Time, or later as part of a Contingent Open. Those Users that do not wish to participate in the Contingent Open are free to cancel their orders at any time and to resubmit those orders after the Contingent Open occurs and continuous trading begins.

If the midpoint of the NBBO is not available for the Contingent Open, all orders will be handled in time sequence, beginning with the order with the oldest timestamp, and be placed on the PEARL Equities Book, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order. Users not seeking an execution at the midpoint of the NBBO during the Contingent Open may cancel their orders before 9:45 a.m. and re-enter those orders after the Contingent Open occurs.

While an Equity Security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. The Re-Opening Process following a halt will occur in the same manner as the Opening Process with the following two

[58] Proposed Exchange Rule 2615 is based on BZX Rule 11.24, BYX Rule 11.23, and EDGA and EDGX Rules 11.7.

[59] According to proposed Exchange Rule 2600(a), Users may begin to enter orders starting at 7:30 a.m. Eastern Time.

[60] *See* Exchange Rule 503 (not stating that self-trade prevention modifiers are ignored during the opening process). The Cboe Equity Exchanges ignore self-trade protection modifiers during their opening and re-opening processes. *See* BZX Rule 11.24(b), BYX Rules 11.23(b), *and* EDGA *and* EDGX Rules 11.7(b).

[61] The Cboe Equity Exchanges do not attempt to match orders at the midpoint to the NBBO in such a situation. They handle orders in time sequence, beginning with the order with the oldest timestamp, and place orders on the book, and such orders are routed, cancelled, or executed in accordance with the terms of the order. *See* BZX Rule 11.24(d), BYX Rule 11.23(d), EDGA *and* EDGX Rules 11.7(d).

exceptions. First, ISOs, orders that include a time-in-force of IOC and orders designated as Post Only will be cancelled or rejected, as applicable. Second, the Re-Opening Process will occur at the midpoint of the: (i) First NBBO subsequent to the first reported trade and first two-sided quotation on the primary listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the primary listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

Where neither of the above conditions required to establish the price of the Re-Opening Process have occurred, the Equity Security may be opened for trading at the discretion of the Exchange. For example, the Exchange would exercise this discretion where the primary listing exchange lifted the halt but has not disseminated a reported trade or two-sided quotation and other non-primary listing exchanges have begun trading the security. In such case, all orders will be handled in time sequence, beginning with the order with the oldest timestamp, and be placed on the PEARL Equities Book, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order.

Order Priority. After the opening process, trades on PEARL Equities will occur when a buy order and a sell order are matched for execution on the PEARL Equities Book. All non-marketable orders resting on the PEARL Equities Book will be ranked and maintained based on price/time priority in the following manner: (1) Price; (2) priority category; (3) time; and (4) ranking restrictions applicable to an order or modifier condition. As such, the System will execute trading interest within a priority category in the System in price/time priority, meaning it will execute all trading interest at the best price level within a priority category in time sequence before executing trading interest within the next priority category. Once all trading interest at that price is exhausted, the System will execute trading interest in the same fashion at the next best price level. Proposed Exchange Rule 2616 will describe the priority of orders resting on the PEARL Equities Book and is consistent with other equity exchanges that employ a price/time priority model, such as the Cboe Equity Exchanges and NYSE Arca.[62]

Proposed Exchange Rule 2616(a)(1) provides that all orders will be ranked based on the working price of an order. Orders to buy will be ranked from highest working price to lowest working price. Orders to sell will be ranked from lowest working price to highest working price. If the working price of an order changes, the price priority of the order will also change.

In general, displayed orders at their displayed prices have priority over non-displayed orders at that same price. Proposed Exchange Rule 2616(a)(1)(A) provides the priority categories and proposed Exchange Rule 2616(a)(2)(A) specifies that within each priority category, where orders to buy (sell) are entered into the Trading System and resting in the PEARL Equities Book at the same working price, the order clearly established as the first entered into the Trading System at such particular price shall have precedence at that price, up to the number of shares specified in the order. Equally priced orders within each priority category will be ranked in time priority with displayed Limit Orders for which their working price is displayed having first priority. Non-marketable Limit Orders for which their working price is non-displayed have second priority.[63] Proposed Exchange Rule 2616(a)(2)(B) provides that for purposes of order priority, ISOs will be treated like Limit Orders.

Proposed Exchange Rule 2616(a)(3) provides that within each priority category, orders will be ranked based on time with each order being assigned a timestamp equal to the time the order is first placed on the PEARL Equities Book. An order is assigned a timestamp based on its original entry time, which is the time when an order is first placed in the PEARL Equities Book. Proposed Exchange Rule 2616(a)(3)(A)(i) provides that an order that is fully routed to an away Trading Center on arrival will not be assigned a timestamp time unless and until any unexecuted portion of the order returns to the PEARL Equities Book. Proposed Exchange Rule 2616(a)(3)(A)(ii) provides that for an order that is partially routed to an away Trading Center on arrival, the portion that is not routed will be assigned a timestamp. If any unexecuted portion of the order returns to the PEARL Equities Book and joins any remaining resting portion of the original order, the returned portion of the order will be assigned the same timestamp as the resting portion of the order.[64] If the resting portion of the original order has already executed and any unexecuted portion of the order returns to the PEARL Equities Book, the returned portion of the order will be assigned a new timestamp. Proposed Exchange Rule 2616(a)(3)(B) provides that an order will be assigned a new timestamp any time the working price of an order changes.

Proposed Exchange Rule 2616(a)(4) provides that when Users elect that their orders not execute against an order with the same Unique Identifier by using an STP modifier described above, the Trading System will not permit such orders to execute against one another, regardless of priority ranking.

Proposed Exchange Rule 2616(a)(5) describes the priority treatment where a User cancels or replaces an order resting on the PEARL Equities Book. Proposed Exchange Rule 2616(a)(5) provides that the order will retain its timestamp and retain its priority only where the modification involves a decrease in the size of the order or a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short. Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing time priority as compared to other orders in the PEARL Equities Book and the timestamp for such order being revised to reflect the time of the modification.

Proposed Exchange Rule 2616(a)(6) provides that the remainder of an order that is partially executed against an incoming order or Aggressing Order will retain its timestamp.

Lastly, proposed Exchange Rule 2616(b) sets forth the information that will be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS,[65] which will include the best-ranked order(s) to buy and the best-ranked order(s) to sell that are displayed on the PEARL Equities Book and the aggregate displayed size of such orders. Proposed Exchange Rule 2616(b) further provides that PEARL

[62] *See* BZX *and* BYX Rules 11.12 *and* EDGA *and* EDGX Rules 11.9. *See also* NYSE Arca Rule 7.36–E.

[63] This second priority category would include the non-displayed working price of an order with a different displayed price due to the order having been re-priced pursuant to the Display Price Sliding Process under proposed Exchange Rule 2614(g)(1). This second priority category would also include Midpoint Peg Orders at their working price.

[64] *See* NYSE Arca Rule 7.36–E(f)(1)(B).

[65] Proposed Exchange Rule 2616(c) is based on Nasdaq Rule 4756(b)(2).

Equities will transmit for display to the appropriate network processor for each equity security: (1) The highest price to buy wherein the aggregate size of all displayed buy interest in the Trading System greater than or equal to that price is one round lot or greater; (2) the aggregate size of all displayed buy interest in the Trading System greater than or equal to the price in (1) above, rounded down to the nearest round lot; (3) the lowest price to sell wherein the aggregate size of all displayed sell interest in the Trading System less than or equal to that price is one round lot or greater; and (4) the aggregate size of all displayed sell interest in the Trading System less than or equal to the price in paragraph (3) above, rounded down to the nearest round lot.

Order Execution. The System will utilize technology currently used by the Exchange's options trading system for purposes of order execution in Equity Securities. The order execution process for equity securities is based on functionality currently approved for use on the Cboe Equities Exchanges, NYSE, NYSE Arca, and NASDAQ. As discussed above, the System will allow Equity Members to enter Market Orders, Limit Orders, and Midpoint Peg Orders to buy and sell Equity Securities on PEARL Equities. The orders will be designated for display or non-display in the System.

Proposed Exchange Rule 2617(a) provides that any order falling within the below parameters shall be referred to as executable. Like on other equity exchanges, an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Exchange Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another Trading Center and cannot be posted to the PEARL Equities Book.[66]

Proposed Exchange Rule 2617(a) will further provide that the System will comply with all applicable securities laws and regulations, including Regulation NMS,[67] Regulation SHO,[68] and the LULD Plan.[69] Proposed Exchange Rule 2617(a)(4)(A) and (B) describe the process for matching incoming and Aggressing Orders for execution against contra-side orders resting on the PEARL Equities Book.[70] An Aggressing Order and an incoming order to buy (sell) will be automatically executed to the extent that it is priced at an amount that equals or exceeds (is less than) any order to sell (buy) in the PEARL Equities Book and is executable. Such order to buy (sell) will be matched for execution against sell (buy) orders resting on the PEARL Equities Book according to the price-time priority ranking of the resting orders.

Proposed Exchange Rule 2617(a)(4)(C) provides that certain orders, based on their operation and User instructions, are permitted to post and rest on the PEARL Equities Book at prices that lock contra-side liquidity, provided, however, that the System will never display a locked market.[71] Proposed Exchange Rule 2617(a)(4)(C) further provides that if an Aggressing Order or an incoming order to buy (sell) will execute upon entry against an order to sell (buy) at the same price as such displayed order to buy (sell), the Aggressing Order or incoming order to buy (sell) will be cancelled or posted to the PEARL Equities Book and ranked in accordance with Exchange Rule 2616.

Proposed Exchange Rule 2617(a)(4)(D) governs the price at which an order is executable when it is posted non-displayed on the PEARL Equities Book and there is a contra-side displayed order at a price which results in an internally locked book.[72] Specifically, for securities priced equal to or greater than $1.00 per share, in the case where a non-displayed order to sell (buy) is posted on the PEARL Equities Book at a price that locks a displayed order to buy (sell) pursuant to proposed Exchange Rule 2617(a)(4)(C) described above, an Aggressing Order or an incoming order to buy (sell) described in proposed Exchange Rules 2617(a)(4)(A) and (B) described above is a Market Order or a Limit Order priced more aggressively than the order to buy (sell) displayed on the PEARL Equities Book will execute against the non-displayed order to sell (buy) resting on the PEARL Equities Book at one-half minimum price variation greater (less) than the price of the resting displayed order to buy (sell). Proposed Exchange Rule 2617(a)(4)(D) will not be applicable for bids or offers under $1.00 per share.

For example, assume the PBBO was $16.10 by $16.11 resulting in a midpoint of $16.105. An order to buy at $16.11 is resting non-displayed on the PEARL Equities Book. A Limit Order to sell at $16.11 designated as Post Only is subsequently entered. Assume that the order to sell designated as Post Only will not remove any liquidity upon entry pursuant to the Exchange's proposed economic best interest functionality under proposed Exchange Rule 2614(c)(2), and will post to the PEARL Equities Book and be displayed at $16.11. The display of this order will, in turn, make the resting non-displayed bid not executable at $16.11. If an incoming order to sell at $16.10 is entered into the PEARL Equities Book, the resting non-displayed order to buy originally priced at $16.11 will execute against the incoming order to sell at $16.105 per share, thus providing a half-penny of price improvement as compared to the order's limit price of $16.11.

Also consider the following example where the execution occurs at a sub-penny price that is not at the midpoint of the PBBO. Assume the PBBO is $16.08 by $16.10 resulting in a midpoint of $16.09. An order to sell at $16.08 is resting non-displayed on the PEARL Equities Book. A Limit Order to buy at $16.08 designated as Post Only is subsequently entered. Assume that the order to buy designated as Post Only will not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality under proposed Exchange Rule 2614(c)(2), and will post to the PEARL Equities Book and be displayed at $16.08. The display of this order will, in turn, make the resting non-displayed order to sell not executable at $16.08. If an incoming order to buy is entered into the PEARL Equities Book at a price greater than $16.08, the resting non-displayed order to sell originally priced at $16.08 will execute against the incoming order to buy at $16.085 per share, thus providing a half-penny of price improvement as compared to the order's limit price of $16.08.

Routing. PEARL Equities routing functionality is described in proposed Exchange Rule 2617(b).[73] PEARL Equities will support orders that are designated to be routed to the PBBO as well as orders that will execute only within PEARL Equities. Routable orders that are designated to execute at the PBBO will be routed to other equity markets to be executed when PEARL Equities is not at the PBBO consistent

[66] *See* BYX *and* BZX Rules 11.13(a) *and* EDGA *and* EDGX Rules 11.10(a).

[67] 17 CFR 242.600, *et seq.*

[68] 17 CFR 242.200, *et seq.*

[69] *See supra* note 5.

[70] Proposed Exchange Rule 2617(a)(4)(A) and (B) are based on NYSE Rule 7.37(a), BZX *and* BYX Rules 11.13(a)(4)(A) *and* (B), *and* EDGA *and* EDGX Rules 11.10(a)(4)(A) *and* (B).

[71] Proposed Exchange Rule 2617(a)(4)(C) is based on BZX *and* BYX Rules 11.13(a)(4)(C), *and* EDGA *and* EDGX Rules 11.10(a)(4)(C).

[72] Proposed Exchange Rule 2617(a)(4)(D) is based on BZX *and* BYX Rules 11.13(a)(4)(D), *and* EDGA *and* EDGX Rules 11.10(a)(4)(D). *See also* Securities Exchange Act Release No. 82087 (November 15, 2017), 82 FR 55472 (November 21, 2017) (SR–BatsEDGA–2017–29) (describing the operation of this same functionality on EDGA).

[73] Proposed Exchange Rule 2617(b) is based various portions of BZX *and* BYX Rule 11.13(b), EDGA *and* EDGX Rule 11.11, *and* NYSE Rule 7.36(f)(1)(B).

with Rules 610(d) and 611 of Regulation NMS.[74] The System will ensure that an order will not be executed at a price that trades through another equities Trading Center. An order that is designated as routable by a User will be routed in compliance with the applicable trade through restrictions. As described above, any order entered with a price that will lock or cross a Protected Quotation that is not eligible for routing will be subject to the Display Price Sliding process under proposed Exchange Rule 2614(g), unless the User elected that the order be cancelled.

In addition, an order marked ''short'' when a short sale price test restriction pursuant to Rule 201 of Regulation SHO is in effect is not eligible for routing by the Exchange. An order that is ineligible for routing due to a short sale price test restriction that includes a time-in-force of IOC will be cancelled upon entry, while a non-routable short sale order with a time-in-force of RHO will be subject to the Short Sale Price Sliding process under proposed Exchange Rule 2614(g)(3). The Exchange will handle routable orders in connection with the Limit-Up Limit-Down Plan as described in proposed Exchange Rule 2622, described below.

As the Exchange currently does for options, PEARL Equities will route orders in Equity Securities via one or more routing brokers that are not affiliated with the Exchange.[75] This routing process will be described under proposed Exchange Rule 2617(b)(1), which is identical to current Exchange Rule 529 that is applicable to options. For each routing broker used by the Exchange, an agreement will be in place between the Exchange and the routing broker that will, among other things, restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange.[76]

The function of the routing broker will be to route orders in Equity Securities trading on PEARL Equities to other equity Trading Centers pursuant to PEARL Equities rules on behalf of PEARL Equities (''Routing Services''). Use of Routing Services to route orders to other market centers is optional. Parties that do not desire to use the Routing Services provided by the Exchange must designate their orders as not available for routing.

The System will designate routable Market Orders and marketable Limit Orders as IOC and will cause such orders to be routed for execution to one or more Trading Centers for potential execution, per the entering User's instructions, in compliance with Rule 611 under Regulation NMS, Regulation SHO, and the Limit-Up Limit-Down Plan. After the System receives responses to Market Orders that were routed away, to the extent an order is not executed in full through the routing process, the System will cancel any unexecuted portion back to the User.

For marketable Limit Orders, after the System receives responses to orders that were routed away, to the extent an order is not executed in full through the routing process, the System will process the balance of such order in accordance with the parameters set by the User when the order was originally entered. As such, the System will either: (i) Cancel the unfilled balance of the order back to the User; (ii) process the unfilled balance of an order as an order designated as Do Not Route subject to the price sliding processes described in proposed Exchange Rules 2614(g) and 2622(e); or (iii) by executing against the PEARL Equities Book and/or re-routing orders to other Trading Centers until the original incoming order is executed in its entirety or its limit price is reached. If the order's limit price is reached, the order will be posted in the PEARL Equities Book, subject to the price sliding processes set forth proposed Exchange Rules 2614(g) and 2622(e). Proposed Exchange Rule 2617(b)(4)(C) would specify that to the extent the System is unable to access a Protected Quotation and there are no other accessible Protected Quotations at the NBBO, the System will treat the order as non-routable, provided, however, that this provision will not apply to Protected Quotations published by a Trading Center against which the Exchange has declared self-help pursuant to proposed Exchange Rule 2617(d).[77]

To start, the Trading System provides a single routing option named ''Order Protection''. Order Protection is a routing option under which an order checks the Trading System for available shares and then is routed to attempt to execute against Protected Quotations at away Trading Centers. For purposes of clarity and should additional routing options be offered in the future,[78] proposed Exchange Rule 2617(b)(5)(A) specifies that all routable orders will be defaulted to the Order Protection routing option.

Proposed Exchange Rule 2617(b)(5) provides that routing options may be combined with all available order types and times-in-force instructions, with the exception of order types and times-in-force instructions whose terms are inconsistent with the terms of a particular routing option. For example, a routing option would be incompatible with a designation that the order also include a Post Only or Do Not Route instruction and an order that includes such a combination will be rejected. The Trading System will consider the quotations only of accessible Trading Centers. The term ''Trading System routing table'' will refer to the proprietary process for determining the specific trading venues to which the Trading System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different Trading System routing table for different routing options and to modify the Trading System routing table at any time without notice.

Proposed Exchange Rule 2617(b)(6) sets forth the priority of routed orders and provides that orders routed by the Trading System to other Trading Centers are not ranked and maintained in the PEARL Equities Book pursuant to proposed Exchange Rule 2616, and therefore are not available for execution against incoming orders and Aggressing Orders pursuant to proposed Exchange Rule 2617(a), described above. Once routed by the Trading System, an order becomes subject to the rules and procedures of the destination Trading Center. The request to cancel an order routed to another Trading Center will not be processed unless and until all or a portion of the order returns unexecuted. For an order that is partially routed to another Trading Center on arrival, the portion that is not routed is assigned a timestamp. If any unexecuted portion of the order returns to the PEARL Equities Book and joins any remaining resting portion of the original order, the returned portion of the order is assigned the same timestamp as the resting portion of the order.[79] If the resting portion of the original order has already executed and any unexecuted portion of the order returns to the Exchange Book, the

[74] 17 CFR 242.610(d), 611.

[75] *See* Exchange Rule 529.

[76] The Exchange's routing logic will not provide any advantage to Users when routing orders to away Trading Centers as compared to other routing methods.

[77] Proposed Exchange Rule 2617(b)(4)(C) is based on BZX *and* BYX Rule 11.13(b)(2)(E) with the only difference being that BZX and BYX will cancel the order in the scenario covered by the rule while the Exchange proposed to treat the order as non-routable.

[78] The Exchange will file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act prior to offering additional routing options.

[79] *See* NYSE Rule 7.36(f)(1)(B).

returned portion of the order is assigned a new timestamp. Following the routing process described above, unless the terms of the order direct otherwise, any unfilled portion of the order shall be ranked in the PEARL Equities Book in accordance with the terms of such order under proposed Exchange Rule 2616 and such order shall be eligible for execution under proposed Exchange Rule 2617.

Risk Settings and Trade Risk Metrics. The Exchange also proposes to offer to all Users of PEARL Equities the ability to establish certain risk control parameters that are intended to assist Users in managing their market risk. The proposed risk controls are set forth under proposed Exchange Rule 2618(a) and are based on those of other equity exchanges.[80] The proposed risk controls are designed to offer Users protection from entering orders outside of certain size and price parameters, as well as selected order type and modifier combinations. The proposed risk controls are also designed to offer Users protection from the risk of duplicative executions.

In addition to the proposed risk settings described above, the Exchange proposes to offer risk functionality that permits Users to block new orders, to cancel all open orders, or to both block new orders and cancel all open orders. Furthermore, the Exchange proposes to offer risk functionality that automatically cancels a User's orders to the extent the User loses its connection to PEARL Equities.

Like other equity exchanges, the Exchange proposes to also offer Purge Ports, which will be a dedicated port that permits a User to simultaneously cancel all or a subset of its orders across multiple logical ports by requesting the Exchange to effect such cancellation. A User initiating such a request may also request that the Exchange block all or a subset of its new inbound orders across multiple logical ports. The block will remain in effect until the earlier of the time at which the User requests the Exchange remove the block or the end of the current trading day.

In particular, the risk control parameters will be useful to Equities Market Makers, who are required to continuously quote in the Equity Securities to which they are assigned. Though the proposed risk controls will be most useful to Equities Market Makers, the Exchange proposes to offer the functionality to all participant types.

In addition to the optional risk control parameters described above, the Exchange proposes to prevent all incoming orders, including those marked ISO, from executing at a price outside the Trading Collar price range.[81] The Trading Collar functionality will not apply to orders eligible for execution during the Opening Process proposed under Exchange Rule 2615. The Trading Collar functionality will be described in proposed Exchange Rule 2618(b). Like other equity exchanges,[82] the Trading Collar will prevent buy orders from trading or routing at prices above the collar and prevents sell orders from trading or routing at prices below the collar. The Trading Collar price range will be calculated using the greater of numerical guidelines for clearly erroneous executions under proposed Exchange Rule 2621 or a specified dollar value established by the Exchange. One difference from other equity exchanges, for Market Orders only, the Exchange proposes to allow Users to select a dollar value lower than the Exchange specified percentages and dollar values on an order by order basis. In such case, the dollar value selected by the User will override the Exchange's default percentage and dollar values. Allowing Users to select a dollar value lower than the Exchange specified percentages and dollar values for their Market Orders provides Users with the ability to augment their risk settings to levels that are commensurate with their risk appetite.

Executions will be permitted at prices within the Trading Collar price range, inclusive of the boundaries. Upon entry, any portion of an order to buy (sell) that will execute, post, or route at a price above (below) the Trading Collar Price will be cancelled.

The Trading Collar price range will be calculated based on a Trading Collar Reference Price. The Exchange proposes a sequence of prices to determine the Trading Collar Reference Price to be used if a certain reference price is unavailable. The Exchange will first utilize the consolidated last sale price disseminated during the Regular Trading Hours on trade date as the Trading Collar Reference Price. If not available, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events will be used. If neither are available to use as the Trading Collar Reference Price, the Exchange will suspend the Trading Collar function, in the interest of maintaining a fair and orderly market in the impacted security.

The Exchange will calculate the Trading Collar price range for a security by applying the Numerical Guideline and reference price to the Trading Collar Reference Price. The result is added to the Trading Collar Reference Price to determine the Trading Collar Price for buy orders, while the result is subtracted from the Trading Collar Reference Price to determine the Trading Collar Price for sell orders. The Trading Collar Price for an order to buy (sell) that is not in the minimum price variation (''MPV'') for the security, as defined in Exchange Rule 2616, will be rounded down (up) to the nearest price at the applicable MPV. The appropriate Trading Collar Price is applied to all orders upon entry. Unlike IEX, the Trading Collar Price is not enforced throughout the life of the order and will not be updated once the order is resting on the PEARL Equities Book.

As stated above, the Trading Collar price range will be calculated using the greater of numerical guidelines for clearly erroneous executions under proposed Exchange Rule 2621 or a specified default dollar value established by the Exchange. The Numerical Guideline to be used in the Trading Collar Price calculation are set forth in the following table.

Trading collar reference price	Regular trading hours numerical guidelines (%)
Greater than $0.00 up to and including $25.00	10
Greater than $25.00 up to and including $50.00	5
Greater than $50.00	3

The Exchange proposes to utilize dollar values in addition to the above percentages to ensure that the Trading Collars do not necessarily constrict the Trading Collars for low priced securities. The Exchange does not propose to specify its default dollar values in proposed Exchange Rule 2621, but rather to post these values on its website.[83] The Exchange believes not including the specified dollar values in its Rules will enable it to modify these

[80] *See* Interpretation and Policy .01 to BYX *and* BZX Rules 11.13, *and* Interpretation and Policy .01 to EDGA *and* EDGX Rules 11.10. *See also* IEX Rule 11.190(f).

[81] The Exchange will apply the proposed Trading Collar price ranges during continuous trading including times when the market for a security is crossed.

[82] *See* IEX Rule 11.190(f).

[83] The Exchange notes that the Cboe Equity Exchanges post their dollar values on their website, rather than their rules. *See* page 9 of the *Cboe US Equities/Options Web Port Controls Specification available at https://cdn.batstrading.com/resources/membership/bats_web_portal_port_controls_specification.pdf.*

values in response to changing market conditions, but in no event will the Exchange adjust these dollar values intra-day. In all circumstances, the Exchange will announce in advance any changes to the specified dollar value via a Regulatory Circular to be distributed to all Equity Members and via its website. As noted above, Users who find the Exchange's specified dollar values as too great can select a dollar value lower for their Market Orders on an order-by-order basis.

Clearly Erroneous Executions. The Exchange proposes to adopt Exchange Rule 2621 regarding clearly erroneous executions, which will be identical in all material respects to the standardized rules of other equity exchanges governing clearly erroneous executions.[84]

LULD Plan and Trading Halts

Market-Wide Circuit Breakers. The Exchange proposes to adopt Rule 2622, paragraphs (a) through (d) of which provides for the market-wide circuit breaker pilot program and be identical to that of other equity exchanges.[85] Proposed Exchange Rule 2622(a)–(d) will operate on a pilot basis set to expire at the close of business on October 18, 2020 and will be identical in all material respects to the standardized market-wide circuit breaker rules of other equity exchanges. If the pilot is not either extended or approved permanently at the end of the pilot period, the Exchange shall amend proposed Exchange Rule 2622 to be consistent with similar rules of other equity exchanges.

LULD Plan Compliance. Proposed Exchange Rule 2622(e) sets forth the Exchange's mechanism for complying with the LULD Plan and is identical in all material respects to the rules of other equities exchanges.[86] In sum, proposed Exchange Rule 2622(e) states that the Exchange is a Participant in the LULD Plan[87] and requires that Equity Members comply with the LULD Plan's provisions.

Proposed Exchange Rule 2622(e) also describes the Exchange's order handling procedures to comply with the LULD Plan. In sum, depending on a User's instructions, the System will re-price and/or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. When re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders.[88] The Exchange will also provide new timestamps to resting orders at the less aggressive price to which such orders are re-priced. Like other equity exchanges, any resting interest that is re-priced pursuant to proposed Exchange Rule 2622(e) will maintain priority ahead of interest that was originally less aggressively priced, regardless of the original timestamps for such orders.

The System will only execute Market Orders or orders that include a time-in-force of IOC at or within the LULD Price Bands. The Exchange proposes to re-price limit-priced interest that is priced outside of the LULD Price Bands as follows: Limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band will be re-priced to the Upper (Lower) Price Band. The System will re-price resting limit-priced interest to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and a User has opted into the Exchange's optional multiple price sliding process, as described in proposed Exchange Rule 2614(g)(1)(C), the System shall re-price such limit-priced interest to the most aggressive permissible price to the order's limit price. Otherwise, the order will not be re-priced again. All other displayed and non-displayed limit interest repriced pursuant to proposed Exchange Rule 2622(e) will remain at its new price unless the Price Bands move such that the price of resting limit-priced interest to buy (sell) would again be above (below) the Upper (Lower) Price Band. Limit-priced interest priced above (below) the Upper (Lower) Price Band will be cancelled if the User elected that the order not be re-priced pursuant to the above described process.

The Exchange will not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band. During a Short Sale Period, as defined in proposed Exchange Rule 2614(g)(3)(A), short sale orders not marked short exempt priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in proposed Exchange Rule 2614(g)(3)(A).

At the end of the Trading Pause (as defined in the LULD Plan), the Exchange will re-open the security in a manner similar to its opening procedures set forth in proposed Exchange Rule 2615, described above. On the occurrence of any trading halt pursuant to proposed market-wide circuit breaker mechanism or LULD Plan, all outstanding orders in the System will remain on the PEARL Equities Book, unless the User has designated that its orders be cancelled.

Proprietary Market Data. The Exchange will offer two standard proprietary market data products for PEARL Equites, the Top of Market feed and the Depth of Market feed. Each of these proprietary market data products are described in proposed Exchange Rule 2625.

Proposed Exchange Rule 2625(a) provides that the Depth of Market feed is a data feed that contains the displayed price and size of each order in an Equity Security entered in the Trading System, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages.[89] Proposed Exchange Rule 2625(b) provides that the Top of Market Feed is a data feed that contains the price and aggregate size of displayed top of book quotations, order execution information, and administrative messages for Equity Securities entered into the Trading System.[90]

The Exchange will also offer historical data for PEARL Equities upon request. As such, proposed Exchange Rule 2625(c) provides that Historical Data is a data product that offers historical equity security data for orders entered into the System upon request.[91]

Retail Order Attribution Program. As described above, the Exchange proposes to allow Users to attach an ''Attributable'' instruction to their displayed orders so that their MPID is included with their order on the Exchange's proprietary market data feeds. The Exchange also proposes to offer another form of attribution to Equity Members that qualify as Retail Member Organizations (''RMOs'') (defined below). In sum, under the

[84] *See* IEX Rule 11.270, Clearly Erroneous Executions.

[85] *See* IEX Rule 11.280, BYX *and* BZX Rules 11.18, *and* EDGA *and* EDGX Rules 11.16.

[86] *See* BYX *and* BZX Rule 11.18(e), *and* EDGA *and* EDGX Rule 11.16(e). *See also* IEX Rule 11.280.

[87] *See supra* note 5. The Exchange intends to become a Participant in the LULD Plan prior to launching PEARL Equities.

[88] As proposed, only limit priced interest with a time-in-force of RHO may rest on the PEARL Equities Book.

[89] The description of the Depth of Market feed under proposed Exchange Rule 2625(a) is based on EDGA Rule 13.8(a), EDGX Rule 13.8(a), and IEX Rule 11.330(a)(3).

[90] The description of the Top of Market feed under proposed Exchange Rule 2625(b) is based on EDGA Rule 13.8(c), EDGX Rule 13.8(c), and IEX Rule 11.330(a)(1).

[91] The description of Historical Data under proposed Exchange Rule 2625(b) is based on BYX Rule 11.22(h), BZX Rule 11.22(h), and IEX Rule 11.330(a)(5).

proposed Retail Order Attribution Program (''Program''), RMOs will be able to designate that their Retail Orders (defined below) be identified as ''Retail'', rather than by their MPID, on the Exchange's proprietary data feeds.[92] Proposed Exchange Rule 2626(f) describes the Retail Order Attribution and provides that RMOs may designate that their Retail Orders be identified as Retail on an order-by-order basis.

Proposed Exchange Rule 2626(a) sets forth definitions applicable to the Program. Retail Member Organization or RMO is be defined as ''an Equity Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.'' A ''Retail Order'' is defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

Proposed Exchange Rule 2626(b) through (d) sets forth the qualification and application process for Equity Members to become RMOs and participate in the Program, how an Equity Member's RMO status may be revoked, and the process to appeal a denial or revocation of RMO status.

Proposed Exchange Rule 2626(b) sets forth the RMO qualification and application process. To qualify as an RMO, an Equity Member must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of this Exchange Rule, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.

To become a Retail Member Organization, a Member must submit: (A) An application form; (B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Equity Member's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow will meet the requirements of the Retail Order definition; and (C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Exchange Rule.

After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing. A disapproved applicant may: (A) Request an appeal of such disapproval by the Exchange as provided in proposed Exchange Rule 2626(d), described below; and/or (B) reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

An RMO must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Equity Member to: (i) Exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Exchange Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If an RMO does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The RMO must: (i) Obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Exchange Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

Proposed Exchange Rule 2626(c) states that if an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in proposed Exchange Rule 2626(a) described above, the Exchange may disqualify an Equity Member from its status as an RMO. The Exchange shall determine if and when an Equity Member is disqualified from its status as an RMO. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Equity Member.

Exchange Rule 2626(d) provides for an appeal process for RMOs that are disqualified or denied RMO status. An RMO that is disqualified under proposed Exchange Rule 2626(c) may appeal the disqualification, and/or reapply for RMO status 90 days after the date of the disqualification notice from the Exchange. If an Equity Member disputes the Exchange's decision to disapprove its RMO application or disqualify it as an RMO, the Equity Member (''appellant'') may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the ''Panel'') review the decision to determine if it was correct. The Panel will consist of the Exchange's Chief Regulatory Officer (''CRO''), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer (''CIO''). The Panel will review the facts and render a decision within the time frame prescribed by the Exchange and may overturn or modify an action taken by the Exchange under proposed Exchange Rule 2626. A determination by the Panel shall constitute final action by the Exchange.

Miscellaneous Rules based on other Equity Exchanges. The Exchange also proposes to adopt the following rules, which are identical in all material respects to those of other equities exchanges: Rule 2619, Trade Reporting and Execution,[93] Rule 2620, Clearance and Settlement, Anonymity,[94] Rule 2623, Short Sales,[95] and Rule 2624, Locking or Crossing Quotations in NMS Stocks.[96]

Conduct and Operational Rules for Equity Members

The Exchange proposes to adopt rules that are identical in all material respects to the approved rules of other equity exchanges,[97] including rules covering similar subject matter as existing Exchange Rules and, the Exchange's affiliate, Miami International Securities

[92] The Exchange's proposed Retail Order Attribution Program is substantially similar to EDGX Rule 11.21, with the only differences being that (1) proposed Exchange Rule 2622(e) will not provide for dedicated ports for Retail Orders, (2) Exchange Rule 2626(e) will be marked ''Reserved'' and not account for dedicated retail order ports as is done on EDGX, and (3) Exchange Rule 2626(f) will not account for Retail Priority Orders, as this functionality would not be offered by PEARL Equites.

[93] *See* BYX *and* BZX Rules 11.14, *and* EDGA *and* EDGX Rules 11.12.

[94] *See* BYX *and* BZX Rules 11.15, *and* EDGA *and* EDGX Rules 11.13. *See also* IEX Rule 11.250.

[95] *See* BYX *and* BZX Rules 11.19. *See also* IEX Rule 11.290.

[96] *See* BYX *and* BZX Rules 11.20. *See also* IEX Rule 11.310.

[97] *See, e.g.,* IEX Chapter 3 (Rules of Fair Practice), Rule 4.200 (Margin), Chapter 5 (Supervision), Chapter 6 (Miscellaneous Provisions), *and* Chapter 10 (Trading Practice Rules). The Exchange will request an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for those rules of another self-regulatory organization (''SRO'') that it proposes to incorporate by reference and to the extent such rules are effected solely by virtue of a change to any of those rules.

Exchange, LLC (''MIAX'') applicable to options.[98] Thus, the Exchange proposes to adopt rules regarding: Rules of Fair Practice (Chapter XXI), Books, Records, and Reports (Chapter XXII), Supervision (Chapter XXIII), Margin (Chapter XXIV), Chapter XXVII (Trading Practice Rules), and other miscellaneous provisions (Chapter XXVIII). At times, certain proposed Rules for PEARL Equities cross reference an existing Exchange Rule applicable to options where the subject matter is either identical or substantially similar. In other cases, the Exchange proposes to adopt a standalone Rule for PEARL Equities where an existing Exchange Rule for options contained terminology specific for options trading.

The Exchange notes that certain requirements that will be applicable to Equity Members are contained in other sections of the Exchange's existing Rules. For example, the Exchange has included rules regarding equity participation into proposed Exchange Rule 2000, but also proposed to include references to applicable registration requirements that are already contained in Chapter II of the Exchange's existing Rules.

Unlisted Trading Privileges

The Exchange proposes to adopt Chapter XXIX regarding securities traded pursuant to unlisted trading privileges and setting standards for certain equity derivative securities that are identical to the rules of equity exchanges.[99] Proposed Exchange Rule 2900, Unlisted Trading Privileges, provide that the Exchange may extend unlisted trading privileges (''UTP'') to any NMS Stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Exchange Act and any such security shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.

Any UTP security that is a UTP Exchange Traded Product, as defined in proposed Exchange Rule 1901, will be subject to the additional following requirements set forth in proposed Exchange Rule 2900 and based on the rules of other equity exchanges.

Proposed Exchange Rule 2900(b)(1) provides that the Exchange will distribute an information circular prior to the commencement of trading in each such UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing exchange, including (a) the special risks of trading the new Exchange Traded Product, (b) the Exchange Rules that will apply to the new Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices.

Proposed Exchange Rule 2900(b)(2) sets forth requirements regarding the product's description and applies only to UTP Exchange Traded Products that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

The Exchange will inform Equity Members of the application of the provisions of proposed Exchange Rule 2900(b)(2)(B) to UTP Exchange Traded Products by means of an information circular. Proposed Exchange Rule 2900(b)(2)(B) requires that Equity Members provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such securities is delivered to such purchaser. In addition, Equity Members will include a written description with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public. Any other written materials provided by an Equity Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle must include a statement substantially in the following form:

''A circular describing the terms and characteristics of [the UTP Exchange Traded Products] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Exchange Traded Products].''

An Equity Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Exchange Traded Products for such omnibus account will be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to the Equity Member under this Rule.

Proposed Exchange Rule 2900(b)(2)(C) provides that upon request of a customer, an Equity Member will also provide a prospectus for the particular UTP Exchange Traded Product.

Proposed Exchange Rule 2900(b)(3) governs trading halts and provides that the Exchange will halt trading in a UTP Exchange Traded Product as provided for in proposed Exchange Rule 2622. Nothing in proposed Exchange Rule 2900(b)(3) is intended to limit the power of the Exchange under the Rules or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

Proposed Exchange Rule 2900(b)(4) sets forth restriction on Equity Members acting as Equities Market Makers on the Exchange in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, ''Reference Assets''):

First, Equities Market Makers must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives (collectively with Reference Assets, ''Related Instruments''), which the Equity Member acting as a registered Equites Market Maker on the Exchange may have or over which it may exercise investment discretion. No Equities Market Maker will be permitted to trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an Equity Member acting as a registered Equities Market Maker on the Exchange, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by proposed Exchange Rule 2900.

Second, an Equities Market Maker on the Exchange will, in a manner prescribed by the Exchange, be required to file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading

[98] Under the proposed rules for PEARL Equities, the Exchange incorporated by reference an existing Exchange rule applicable options where that rule did not solely incorporate a rule of the Exchange's affiliate, MIAX, by reference, but also included substantive requirements. In the case where an existing Exchange Rule applicable to options incorporated by reference a MIAX Rule, the Exchange proposed a rule for equities that directly incorporated the same MIAX rule by reference.

[99] *See, e.g.,* proposed MEMX Rule 14.1. *See also* BYX, EDGA, *and* EDGX Rules 14.1.

Accounts'') for which Related Instruments are traded: (i) In which the Equities Market Maker holds an interest; (ii) over which it has investment discretion; or (iii) in which it shares in the profits and/or losses. An Equities Market Maker on the Exchange will not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by proposed Exchange Rule 2900.

Third, in addition to the existing obligations under Exchange rules regarding the production of books and records under proposed Chapter XXII described above, an Equities Market Maker on the Exchange will be required to, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Equities Market Maker on the Exchange for which Related Instruments are traded.

Lastly, proposed Exchange Rule 2900(b)(4) provides that an Equities Market Maker on the Exchange will not use any material nonpublic information in connection with trading a Related Instrument.

Proposed Exchange Rule 2900(b)(5) provides that the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.

Dues, Fees, Assessments, and Other Charges

The Exchange proposes to adopt rules with regard to fees it may charge that are identical or substantially similar to the rules of the Cboe Equity Exchanges and IEX.[100] Proposed Exchange Rule 3000(a) will set forth the Exchange's general ability to prescribe dues, fees, assessments and other charges.

Proposed Exchange Rule 3000(b) describes the manner in which the Exchange will assess fees related to Section 31 of the Exchange Act to Member transactions on PEARL Equities. Proposed Exchange Rule 3000(c) provides that the Exchange will provide Equity Members notice of all relevant dues, fees, assessment and other charges and that such notice will be made via the Exchange's website or other reasonable method. Proposed Exchange Rule 3000(d) provides that to the extent the Exchange is charged a fee by a third party that results directly from an Equity Member cross-connecting its trading hardware to the Exchange's System from another Trading Center's system that is located in the same data center as the Exchange, the Exchange will pass that fee on, in full, to the Equity Member.[101]

Proposed Exchange Rule 3001 provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines related to PEARL Equities will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, in which case Miami International Holdings, Inc. will be entitled to the distribution of the remaining assets of the Exchange).[102]

Proposed Exchange Rule 3002(a) provides that each Equity Member, and all applicants for registration as such, shall be required to provide a clearing account number for an account at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges pursuant to Exchange Rule 3000, including the Exchange Fee Schedule thereto; Regulatory Transaction Fees pursuant to Exchange Rule 3000(b); dues, assessments and other charges pursuant to Exchange Rules 1202 and 1203 to the extent the Exchange were to determine to charge such fees; and fines, sanctions and other charges pursuant to Chapters IX, X, and XI of the Exchange Rulebook which are due and owing to the Exchange.[103]

Proposed Exchange Rule 3002(b) provides that all disputes concerning fees, dues or charges assessed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All disputes related to fees, dues or other charges must be submitted to the Exchange no later than sixty (60) days after the date of the monthly invoice. All Exchange invoices are due in full on a timely basis and payable in accordance with proposed Exchange Rule 3002(a). Any disputed amount resolved in the Member's favor will be subsequently credited to the clearing account number for an account at the NSCC.

National Market System Plans

The Exchange will operate as a full and equal participant in the national market system for equity trading established under Section 11A of the Exchange Act, just as its options market participates today. The Exchange is currently a member of the National Market System Plan for the Selection and Reservation of Securities Symbols. The Exchange will also become a member of the following national market systems plans applicable to the trading of equity securities:

- The National Market System Plan to Address Extraordinary Market Volatility;
- The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''NASDAQ/UTP Plan,'' ''UTP Plan'');
- The Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (''CTA/CQ Plans''); and
- The National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS.

The Exchange expects to participate in those plans on the same terms currently applicable to current members of those plans, and it expects little or no plan impact due to the proposed operation of PEARL Equities is similar to several other existing equity exchanges.

Regulation

The Exchange will leverage many of the structures it established to operate as a national securities exchange in compliance with Section 6 of the Exchange Act. As described in more detail below, there will be three elements of that regulation: (1) The Exchange will join the existing equities industry agreements and establish new agreements, as necessary, pursuant to Section 17(d) of the Exchange Act, as it has with respect to its options market, (2) the Exchange's Regulatory Services Agreement (''RSA'') with FINRA will

[100] *See* Chapter 15 of IEX Rules and Chapter 15 of the Rules of each of the Cboe Equity Exchanges. The Exchange will file a separate proposed rule change with the Commission to establish its fee structure.

[101] Proposed Exchange Rule 3000(d) is based on IEX Rule 15.110(d).

[102] Proposed Exchange Rule 3001 is based on Rule 15.2 of each of the Cboe Equity Exchanges.

[103] Proposed Exchange Rule 3002 is based on IEX Rule 15.120.

govern many aspects of the regulation and discipline of Members that participate in equities trading, just as it does for options market regulation, and (3) the Exchange will authorize Equity Members to trade on PEARL Equities and conduct surveillance of equity trading as it does today for options.

Section 17(d) of the Exchange Act and the related Exchange Act rules permit SROs to allocate certain regulatory responsibility to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1, the Commission designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Members also must be members of at least one other SRO, the Exchange will generally not be designated as the DEA for any of its Members.

Rule 17d–2 of the Exchange Act permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange will establish 17d–2 Plans for Allocation of Regulatory Responsibilities, including, subject to Commission approval, (i) a plan with FINRA pursuant to which the Exchange and FINRA will agree to allocate to FINRA, with respect to common members, regulatory responsibility for overseeing and enforcing certain applicable laws, rules, and regulations of PEARL Equities, (ii) joining the multi-party plan with FINRA and other national securities exchanges for the surveillance, investigation, and enforcement of common insider trading rules, and (iii) joining the multi-party plan with FINRA and other national securities exchanges for the allocation of regulatory responsibilities with respect to certain Regulation NMS Rules. In addition, the Exchange will (i) expand its existing RSA with FINRA, pursuant to which FINRA performs various regulatory services on behalf of the Exchange, subject to the Exchange's ultimate responsibility, including the review of membership applications and the conduct of investigations, disciplinary and hearing services, (ii) join the Intermarket Surveillance Group (''ISG''), and (iii) submit a Minor Rule Violation Plan to the Commission under Rule 19d–1(c)(2) of the Exchange Act.

FINRA also currently surveils options trading on behalf of the Exchange pursuant to an existing RSA designed to detect violations of Exchange rules and applicable federal securities laws. This existing RSA will be expanded to provide for FINRA to also surveil equities trading on PEARL Equities on behalf of the Exchange and the Exchange will remain responsible for FINRA's performance under this RSA. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of equity securities and to deter and detect violations of Exchange rules and applicable federal securities laws. The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Pursuant to proposed Exchange Rule 2900(b)(5), with respect to securities traded under proposed Chapter 14 of the Exchange Rules pursuant to unlisted trading privileges, the Exchange shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which shares of an exchange-traded product is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets. FINRA, on behalf of the Exchange, may obtain information, and will communicate information as needed, regarding trading in the shares of the exchange-traded products, as well as in the underlying exchange-traded securities and instruments with other markets and other entities that are members of ISG. In addition, the Exchange may obtain information regarding trading in such shares and underlying securities and instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [104] and 11A of the Act [105] in general, and furthers the objectives of Sections 6(b)(5) [106] and 11A(a)(1) of the Act [107] in particular, in that it is designed 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the fundamental premise of the proposal is that the Exchange will operate its equity market in a manner similar to that of other equity exchanges, with a suite of order types and deterministic functionality leveraging the Exchange's existing robust and resilient technology platform. The Exchange believes PEARL Equities will benefit individual investors, equity trading firms, and the equities market generally by providing much needed competition to the existing three dominant exchange groups. The entry of an innovative, cost competitive market such as PEARL Equities will promote competition, spurring existing exchanges to improve their own executions systems and reduce trading costs.

The Exchange proposes to offer a suite of conventional order types and order type modifiers that are designed to provide for an efficient, robust, and transparent order matching process. The basis for a majority of the rules of PEARL Equities are the approved rules of other equity exchanges, which have already been found consistent with the Exchange Act. Therefore, the Exchange does not believe that any of the proposed order types and order type functionality raise any new or novel issues that have not been previously considered by the Commission.

In few instances where the Exchange proposed functionality that differs from that of other equities exchanges, it has done so either to improve upon an existing process, such as in the case of the proposed Opening Process [108] and

[104] 15 U.S.C. 78f(b).

[105] 15 U.S.C. 78k–1.

[106] 15 U.S.C. 78f(b)(5).

[107] 15 U.S.C. 78k–1(a)(1).

[108] *See* proposed Exchange Rule 2615.

proposed risk controls,[109] or to adopt functionality to address and maintain a fair and orderly market, such as re-pricing of odd lot sized orders.[110]

Specifically, the Exchange believes proposed Exchange Rules 2611(b) describing how the Exchange will re-price an odd-lot order removes impediments to and perfect the mechanism of a free and open market and a national market system by reducing the potential for an odd lot order to appear on the Exchange's proprietary data feeds as though it is locking or crossing the PBBO. The proposed re-pricing of odd lot orders is also similar to that of other equity exchanges.[111]

The Exchange further believes that the functionality that it proposes to offer is consistent with Section 6(b)(5) of the Act[112] because the System is designed to be efficient and its operation transparent, thereby facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open national market system. As noted above, the Exchange's proposed rules, order type functionality, and order matching process are designed to comply with all applicable regulatory requirements, including Regulation NMS, Regulation SHO, and the LULD Plan.

The Exchange believes that the rules of PEARL Equities as well as the proposed method of monitoring for compliance with and enforcing such rules is also consistent with the Exchange Act, particularly Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange.[113] The Exchange has proposed to adopt rules necessary to regulate Equity Members that are nearly identical to the approved rules of other equities exchanges. The Exchange proposes to regulate activity on PEARL Equities in the same way it regulates activity on its options market, specifically through various Exchange specific functions, an RSA with FINRA, as well as participation in industry plans, including plans pursuant to Rule 17d–2 under the Exchange Act.

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. The Exchange operates in an intensely competitive global marketplace for transaction services. Relying on its array of services and benefits, the Exchange competes for the privilege of providing market services to broker-dealers. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency.

Consolidation amongst U.S. equities exchanges has led to nearly all being owned and operated by three primary exchange groups,[114] thereby diminishing the competitive landscape among equities exchanges. This proposal will enhance competition by allowing the Exchange to leverage its existing robust technology platform to provide a resilient, deterministic, and transparent execution platform for equity securities. The proposed rule change will insert an additional, much needed, competitive dynamic to existing equities landscape by allowing the Exchange to compete with existing equity exchanges on order types, order type functionality, risk controls, and order matching processes.

The proposed rule change will reduce overall trading costs and increase price competition, both pro-competitive developments, and will promote further initiative and innovation among market centers and market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2020–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2020–03. 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

[109] *See* proposed Exchange Rules 2614(a)(1)(I) *and* 2618.

[110] *See* proposed Exchange Rule 2611.

[111] Proposed Exchange Rule 2611 would differ from NYSE Rule 7.38, NYSE Arca Rule 7.38–E, NYSE American Rule 7.38E, *and* NYSE National Rule 7.38 by re-pricing the odd lot order to buy (sell) to the PBB (PBO) of the Exchange when the PBB (PBO) of the Exchange was previously locked or crossed by an away Trading Center.

[112] 15 U.S.C. 78(f)(5).

[113] 15 U.S.C. 78f(b)(1), 78f(b)(5) *and* 78f(b)(6).

[114] Currently, 12 of the 14 registered U.S. equity exchanges are owned by three groups: Cboe Holdings, Inc. operates four equities exchanges, BYX, BZX, EDGA, and EDGX; the Intercontinental Exchange Group, Inc. (''ICE'') operates five equities exchanges, NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago; and Nasdaq, Inc. operates three equities exchanges, Nasdaq, Nasdaq Phlx, and Nasdaq BX. IEX and the Long Term Stock Exchange, Inc. (''LTSE'') are the only two independently operated equities exchanges. The LTSE has yet to commence operations.

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2020–03 and should be submitted on or before March 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[115]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02750 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

[115] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 104, SEC File No. 270–411, OMB Control No. 3235–0465

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 104 of Regulation M (17 CFR 242.104), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 104—Stabilizing and Other Activities in Connection with an Offering—permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (*i.e.,* the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the Self-Regulatory Organization (SRO).

There are approximately 805 respondents per year that require an aggregate total of 161 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 0.20 hours (12 minutes) to complete. Thus, the total compliance burden per year is 161 hours. The total estimated internal labor cost of compliance for the respondents is approximately $11,270.00 per year, resulting in an estimated internal cost of compliance for each respondent per response of approximately $14.00 (*i.e.,* $11,270.00/805 respondents).

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02780 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 17a–22, SEC File No. 270–202, OMB Control No. 3235–0196

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 17a–22 (17 CFR. 240.17a–22) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–22 requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued or made generally available. When the Commission is not the clearing agency's appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency.

The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 are registered clearing agencies. The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies but on average there are approximately 120 filings per year per active clearing agency. There are nine clearing agencies, but only seven active registered clearing agencies that are expected to submit filings under Rule 17a–22. The Commission staff estimates that each response requires approximately .25 hours (fifteen minutes), which represents the time it takes for a staff person at the clearing agency to properly identify a document subject to the rule, print and make copies, and mail that document to the Commission. Thus, the total annual burden for all active clearing agencies is approximately 210 hours (7 clearing agencies multiplied by 120 filings per clearing agency multiplied by .25 hours).

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 7, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02778 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88136; File No. SR–ICEEU–2019–019]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe Collateral and Haircut Policy and Collateral and Haircut Procedures

February 6, 2020.

I. Introduction

On December 4, 2019, ICE Clear Europe Limited (the ''Clearing House,'' or ''ICEEU'') 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 replace the existing Collateral and Haircut Policy (the ''Existing Policy''), which currently exists as a single document, with two new documents: (i) A revised Collateral and Haircut Policy (the ''Revised Policy'') that would specify high-level policy details and (ii) a new Collateral and Haircut Procedures (the ''Collateral Procedures'') that would provide supporting operational and other details for the Revised Policy. The proposed rule change was published for comment in the **Federal Register** on December 23, 2019.[3] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICEEU is proposing to adopt the Revised Policy and new Collateral Procedures, which, taken together, would replace and supersede the Existing Policy.[4] The Existing Policy sets out ICEEU's overall approach to defining the types, amounts and composition of cash and non-cash collateral that ICEEU accepts from Clearing Members (''CMs'') to cover their guaranty fund and margin requirements. The Existing Policy also sets out ICEEU's overall goal of mitigating price risk it may face when liquidating collateral of a defaulting CM by setting and enforcing a list of acceptable collateral (''Permitted Cover''); setting and applying risk-based haircuts to the value of the collateral (''Haircuts''); setting and enforcing concentration limits on the amount of collateral a CM may post, to provide diversification of the collateral pool (''Concentration Limits''); and ensuring Permitted Cover, Haircuts and Concentration Limits are aligned to the ICEEU's risk appetite and compliant with applicable legal and regulatory requirements.

The approach of the proposed rule change is the creation of two documents so that elements of the Existing Policy are split between the Revised Policy and the Collateral Procedures. The new documents would retain the high-level policy details from the Existing Policy in the Revised Policy and place supporting detail from the Existing Policy into the new Collateral Procedures. The amendments would also remove certain operational details in the Existing Policy that ICEEU has determined are not needed in the Revised Policy or Collateral Procedures because they are contained in other Clearing House documentation. Further, the proposed rule change would not itself result in material changes to the overall purpose of the policy, the underlying haircut model, or to the eligible collateral, haircuts and concentration limitations that the Clearing House currently imposes. The discussion below describes the information from the Existing Policy that is either being retained in the Revised Policy and Collateral Procedures or information not repeated in these documents because they are duplicative of information contained in other Clearing House documents.

A. Revised Policy

The Revised Policy is retaining the high-level policy goals from the Existing Policy related to Permitted Cover, Haircuts, and Concentration Limits described below.

1. Permitted Cover

The Revised Policy would restate the Existing Policy's overall requirements that Permitted Cover assets be highly liquid with low credit and market risk; are priced in an eligible currency; and entail risks limited to those that ICEEU is able to identify, measure, monitor and mitigate. The specific list of Permitted Cover would not be contained in the Revised Policy (or Collateral Procedures) itself but would continue to be available on the ICEEU website. The specific principles for accepting Permitted Cover discussed in the Existing Policy would reside the Collateral Procedures as discussed below.

2. Haircuts

The Revised Policy would restate the Existing Policy's overall requirements that Haircuts be based on a model that includes the creditworthiness of the issuer; the asset's market risk and liquidity risk; and market conditions and volatility. Certain details such as those relating to the determination of minimum haircuts discussed in the Existing Policy would be specified in the Collateral Procedures, or in related model documentation. The Revised Policy would also state the general principal from the Existing Policy that wrong way risk with respect to posting of collateral (*i.e.,* the risk that the value of a particular CM's collateral is likely to decline at the same time the Clearing House's risk to the CM increases) would be mitigated through member-specific restrictions and actions rather than Haircuts.

3. Concentration Limits

The Revised Policy would restate the Existing Policy's overall framework for setting CM Concentration Limits. It

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 87771 (December 17, 2019), 84 FR 70584 (December 23, 2019) (SR–ICEEU–2019–019) (''Notice'').

[4] The following description of the proposed rule change is excerpted from the Notice, 84 FR 70584.

would provide that ICEEU may limit (i) the absolute amount of each type of collateral that CMs may lodge to minimize concentration and enable liquidity and (ii) the relative amount of each collateral type in a CM's collateral portfolio to prevent overexposure to price movements in individual asset classes. Details regarding collateral management, data and reporting and legal review of enforceability of collateral found in the Existing Policy would be split across the Collateral Procedures, ICEEU's Collateral and Haircut Schedule of Parameters and Reviews (the ''Parameters'') and the Model Documentation for Collateral Haircut Model. Where details from the Existing Policy such as intraday and end of day valuation of collateral, ICEEU's investment program, or custody arrangements for non-cash collateral are included in other Clearing House policies, procedures and documentation, such as the Treasury & Banking Services Policy, Investment Management Policy, F&O Risk Policy, Document Governance Schedule and Risk Appetite Framework, to avoid duplication, they would not be covered in the Revised Policy or Collateral Procedures.

4. Policy Governance

The Revised Policy would restate the Existing Policy's high level overall arrangements for policy governance, reviews and exception handling.

B. Collateral Procedures

The new Collateral Procedures would function as the application of the principles of the Revised Policy by describing the operational details and related governance processes for Permitted Cover, Haircuts and Concentration Limits that are currently in the Existing Policy and described below.

1. Permitted Cover

Detail regarding Permitted Cover requirements from the Existing Policy, and the adoption of the new Collateral Procedures, would not result in a change in the list of Eligible Permitted Cover. The Collateral Procedures would apply general eligibility criteria to Permitted Cover from the Existing Policy such as highly liquid assets, price history, capacity to revalue, etc. The Collateral Procedures also describe the additional criteria applied to financial instruments and gold assets currently in the Existing Policy.

The sovereign rating model has been retired by ICEEU and instead, the Procedures and related Parameters address sovereign quality. The elements related to sovereign rating are the same as in the Existing Policy and discussed in the new Collateral Procedures and Parameters.

Several other matters from the Existing Policy would not be described in the Collateral Procedures because they are found in other documents. Certain additional details and parameters would be set out in an annex to the Procedure or in the List of Permitted Cover, which is an operational document that is published on the ice.com website.[5] Unlike the Existing Policy, the Collateral Procedures would not have a section specifically addressing restrictions on Guaranty Fund collateral as this is already addressed in the Finance Procedures and List of Permitted Cover.

2. Haircuts

As is currently the case with the Existing Policy, the proposed Collateral Procedures would apply conservative haircuts to Permitted Cover to ensure that, even in stressed market conditions, the collateral could be liquidated at least at the value it would be used to cover, and would also continue to apply cross-currency haircuts to mitigate foreign exchange risk where the currency applicable to the collateral would be different from the currency of the requirements it would be covering.

As is currently the case with the Existing Policy, the Collateral Procedures would state that ICEEU determines Haircuts using a combination of a model, analytical tools and/or qualitative overlays. The model would be described in the collateral and haircut model documentation and related parameters rather than being repeated in the Collateral Procedures or Revised Policy. As is currently the case with the Existing Policy, the Collateral Procedures would provide that consistent with the existing model, Haircuts would further be based on a number of factors, including, but not limited to credit assessment of the issuer, market conditions, volatility, and liquidity of the underlying market.

These factors are substantially the same as those set out in the Existing Policy, other than the wrong way risk factor, which is addressed through an operational report, and is addressed through CM-specific measures rather than Haircuts.

Several other matters covered in the Existing Policy would not be included in the Revised Policy and Collateral Procedures. Haircuts would be subject to minimum values which would be addressed in the Parameters, instead of the Revised Policy or Collateral Procedures, and the final Haircut value would be rounded up to the nearest ''Haircut Rounding Interval.'' Certain additional requirements relating to Haircuts on bonds and gold bullion, as well as collateral pricing, which are currently addressed in the Existing Policy, would be removed from the Existing Policy as they are already addressed, and will continue to be addressed, in the Model and the Parameters. The list of data used in collateral pricing that is currently set out in the Existing Policy would instead be set out in the Parameters. The description of exceptions would be set out in Clearing House operational documentation.

As is currently the case with the Existing Policy, the Collateral Procedures would call for ICEEU to limit the likelihood of procyclical impact from Haircuts as issuer creditworthiness deteriorates and haircuts increase by applying a conservative minimum haircut, identifying potential future events, and providing notice of changes to haircuts.

3. Concentration Limits

The approach to Concentration Limits contained in the proposed Collateral Procedures would be substantially similar to the Existing Policy. However, certain details regarding the collateral breakdown report currently in the Existing Policy would not be included in the Collateral Procedures (as they are inconsistent with the level of detail in the Collateral Procedures generally) but would instead be set out in operational documentation. The report itself, which details how collateral values are produced at an operational level, will continue to be produced as part of the normal reporting cycle.

As is currently the case with the Existing Policy, the Collateral Procedures describe the framework for how ICEEU determines the absolute amount of each type of collateral that can be accepted from a CM (''Absolute Limits'') and the relative amount of each type of collateral within a CM's collateral portfolio (''Relative Limits''). As compared to the Existing Policy, the Collateral Procedures would clarify that all markets cleared by ICEEU would be included in the calculation methodology for Absolute Limits. The description of the Absolute Limits in the Collateral Procedures would otherwise generally be consistent with the description of the Absolute Limits set out in the Existing Policy.

[5] Available at: *https://www.theice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf.*

Additionally, unlike the Existing Policy, the Collateral Procedures would not take into account ICEEU's committed repo facility as a basis for allowing Clearing Members to exceed otherwise applicable Absolute Limits.

4. Further Restrictions

As is currently the case with the Existing Policy, the Collateral Procedures would apply additional restrictions and measures with respect to collateral such as reducing Absolute Limits once the CDS spread of the issuer breaches pre-defined levels and analyzing CMs' non-cash collateral to identify WWR daily.

The Collateral Procedures would also address cross clearing house concentration limits consistently with the manner in which they are addressed in the Existing Policy.

5. Data Management

While the Collateral Procedures restate from the Existing Policy that the sources of data used for collateral valuation and for Haircuts and Concentration Limits are approved and reviewed periodically at a senior level, valuation of collateral is outside the scope of the Collateral and Haircut Policy and Procedures and covered in the model documentation. The Existing Policy discussed the manner in which ICEEU monitored the value of collateral.

6. Daily Monitoring

Pursuant to the proposed Collateral Procedures, ICEEU would continue, from the Existing Policy, daily monitoring processes to ensure the eligibility of the list of Permitted Cover, to ensure the adequacy of Haircuts and to enforce the Concentration Limits

Certain details under Data and Reporting in the Existing Policy concerning the reports that are available to various stakeholders in the form of periodic Collateral Reports, will not be included in the Revised Policy or Collateral Procedures. The back testing of the haircut parameters currently set out in the Existing Policy would be instead set out in the Parameters (and the substance of those parameters is not proposed to be changed). Likewise, the description of the Risk Committee collateral reporting would be governed through the Terms of Reference for committees instead of through the Revised Policy or Collateral Procedures (and is not otherwise proposed to be changed).

7. Governance

Governance relating to Permitted Cover, collateral and Haircuts would generally remain the same as in the Existing Policy, though the Collateral Procedures would add that competent authorities would be notified of any material breaches. Additionally, requirements under the Existing Policy relating to independent validation and policy review are covered in the Model Risk Governance Framework and Documentation Governance Schedule, and would not be addressed in the Revised Policy or Collateral Procedures.

8. Other Existing Policy Matters

Certain matters currently set out in the Existing Policy would be removed and addressed in documentation other than the Revised Policy or Collateral Procedures. Collateral management would be set out in the Treasury and Banking Services Policy and the Investment Management Procedures. The monitoring schedule would be set out in the Parameters. The description of the legal review of enforceability of collateral that was set out in the Existing Policy is generally considered to be business as usual work for the legal team and would no longer be covered through policies.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [6] and Rules 17Ad–22(e)(2), (e)(3), and (e)(5) thereunder.[7]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICEEU be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICEEU or for which it is responsible, and, in general, to protect investors and the public interest.[8]

As described above, ICEEU's Existing Policy document is being split into the following two documents: (i) Revised Policy and new Collateral Procedures. The two new documents will separate the higher level policy principles from the specific procedures. In addition, neither the Revised Policy nor the new Collateral Procedures will contain information that is currently in other operational level documents. As a result of the proposed rule change, the Revised Policy and new Collateral Procedure will streamline but not materially alter the Existing Policy.

By clarifying and restating in a separate document its overall policy approach to the types, amounts and composition of cash and non-cash collateral that ICEEU accepts from CMs to cover their guaranty fund and margin requirements and by detailing the current procedures for applying that approach, the Commission believes the proposed rule change would continue, in an effective and focused way, ICEEU's ability to manage financial resources and ultimately its ability to clear and settle transactions. For example, the Collateral Procedures detailing eligibility criteria for Permitted Cover describe conservative standards such as assets that are highly liquid, have sufficient price history, have the capacity for daily revaluation, and are in eligible currency.

The Commission believes that this will help ICEEU focus procedurally to meet its obligations when liquidating collateral. Further, the factors upon which Haircuts will be based that are detailed in the Collateral Procedures include credit assessment of the issuer, maturity of the asset, volatility, liquidity of underlying market, stressed market conditions, preemptive application of potential future events, and application of conservative minimum haircut level to all collateral types. The Commission believes that this level of detail will help ICEEU continue to apply conservative haircuts to Permitted Cover to ensure that, even in stressed market conditions, the collateral could be liquidated to meet obligations while also limiting the likelihood of procyclical impacts from Haircuts as issuer creditworthiness deteriorates and haircuts increase.

Similarly, the approach to Concentration Limits detailed in the Collateral Procedures noted above sets a framework for how the limits are set and clarifies that all markets cleared by ICEEU would be included in the calculation methodology for Absolute Limits and that an individual CM's collateral portfolios would be balanced between different assets based on a qualitative assessment of the different types of collateral, taking into account factors such as the types of issuers, issuer credit risk and collateral liquidity and price volatility. The Commission believes that this sort of information

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(e)(2),(e)(3)(i),(e)(5).

[8] 15 U.S.C. 78q–1(b)(3)(F).

within its procedures continues and focuses ICEEU's ability to manage financial resources with a conservative approach to the permissible collateral pool.

The Commission also notes that it has previously found these policies and procedures consistent with the Act [9] and because there are no material changes, believes that it continues to be consistent with the Act.

Therefore, for the reasons discussed above, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICEEU's custody or control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rule 17Ad–22(e)(3)(i)

Rule 17Ad–22(e)(3)(i) requires that ICEEU establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework that identifies, measures, monitors, and manages the range of risks that it faces.

As described above, ICEEU's proposed Collateral Procedures, similar to the Existing Policy, continues to list various eligibility criteria for Permitted Cover, factors for determining Haircuts, and sets the framework for the amount of each type of collateral that can be accepted from a CM. The Commission believes that by proposing Collateral Procedures to follow in this regard, ICEEU will be able to continue, in a streamlined and focused fashion, to mitigate collateral price and liquidation risk through setting acceptable Permitted Cover, Haircuts and Concentration Limits and providing guidelines for monitoring these measures and managing any deviations or related issues. The Commission also believes that by documenting the management of its collateral liquidation risks in this way, ICEEU generally enhances its financial stability by ensuring that the collateral it accepts from CMs continues to adequately meet its obligations.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(3)(i).[11]

C. Consistency With Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) requires that ICEEU establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually.[12]

The Commission believes that the factors and other considerations noted above as described in the proposed Collateral Procedures with respect acceptable Permitted Cover, Haircuts, and Concentration Limits, including low credit risk of assets, transferability of assets, market conditions, and expectations of future volatility, will continue to maintain ICEEU's ability to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits. Further, the Revised Policy and Collateral Procedures continue to provide that Concentration Limits be reviewed at least monthly at a senior level and Permitted Cover, Haircuts and Concentration Limits are subject to regular reviews and monitoring and changed ad–hoc if needed.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(5).[13]

D. Consistency With Rule 17Ad–22(e)(2)

Rule 17Ad–22(e)(2) requires, among other things, that ICEEU establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[14]

As noted above, similar to the Existing Policy, the proposed Revised Policy and the Collateral Procedures continue to describe the governance relating to Permitted Cover, Haircuts, and Concentration Limits. Specifically, the Revised Policy provides that the document owner is responsible for ensuring that it remains up-to-date and is reviewed in accordance with ICEEU's governance processes and will report material breaches or unapproved deviations from this Policy to their Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if further escalation should be made to relevant senior executives, the Board and/or competent authorities. Further, the proposed Collateral Procedures state that proposals to add, remove, change, or set Permitted Cover, Haircuts or Concentration Limits are reviewed and approved at a senior level and amendments would be published where practicable by circular in advance of taking effect to CMs and relevant competent authorities. The Commission therefore believes that this continues to maintain ICEEU's policies and procedures in a manner reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2).[15]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act [16] and Rules 17Ad–22(e)(3)(i), (e)(5), and (e)(2) thereunder.[17]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [18] that the proposed rule change (SR–ICEEU–2019–019) be, and hereby is, approved.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02748 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

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[9] Securities Exchange Act Release No. 74955 (May 13, 2015), 80 FR 28733 (May 19, 2015) (SR–ICEEU–2015–007).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(e)(3)(i).

[12] 17 CFR 240.17Ad–22(e)(5).

[13] 17 CFR 240.17Ad–22(e)(5).

[14] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[15] 17 CFR 240.17Ad–22(e)(2).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(e)(3)(i),(e)(5),(e)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

Extension:

Rule 12h–1(f), SEC File No. 270–570, OMB Control No. 3235–0632

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 12h–1(f) (17 CFR 240.12h–1(f)) under the Securities Exchange Act of 1934 (''Exchange Act'') provides an exemption from the Exchange Act Section 12(g) registration requirements for compensatory employee stock options of issuers that are not required to file periodic reports under the Exchange Act. The information required under Exchange Act Rule 12h–1 is not filed with the Commission. Exchange Act Rule 12h–1(f) permits issuers to provide the required information to the option holders either by: (i) Physical or electronic delivery of the information; or (ii) written notice to the option holders of the availability of the information on a password-protected internet site. We estimate that it takes approximately 2 burden hours per response to prepare and provide the information required under Rule 12h–1(f) and it is prepared and provided by approximately 40 respondents. We estimate that 25% of the 2 hours per response (0.5 hours per response) is prepared by the company for a total annual reporting burden of 20 hours (0.5 hours per response × 40 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 7, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02782 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88135; File No. SR–FINRA–2020–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Transaction Credits and Trade Reporting Fees Applicable to Retail Participants That Use the FINRA/Nasdaq Trade Reporting Facility

February 6, 2020.

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 February 3, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 7610A and 7620A to eliminate transaction credits and trade reporting fees applicable to Retail Participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the ''FINRA/Nasdaq TRF Carteret'') and the FINRA/Nasdaq Trade Reporting Facility Chicago (the ''FINRA/Nasdaq TRF Chicago'') (collectively, the ''FINRA/Nasdaq TRF'').

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by Nasdaq, Inc. (''Nasdaq''). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and Nasdaq entered into a limited liability company agreement (the ''LLC Agreement''). Under the LLC Agreement, FINRA, the ''SRO Member,'' has sole regulatory responsibility for the FINRA/Nasdaq TRF. Nasdaq, the ''Business Member,'' is primarily responsible for the management of the FINRA/Nasdaq TRF's business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

Pursuant to the FINRA Rule 7600A Series, FINRA/Nasdaq TRF participants are charged fees and may qualify for fee caps (Rule 7620A), and also may qualify for revenue sharing payments for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). These rules are administered by Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF on behalf of FINRA,[5] and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF.

Pursuant to FINRA Rule 7620A, FINRA/Nasdaq TRF has a special pricing program, known as the ''Retail Participant Program'' [6] for which a

[5] FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

[6] To qualify as a ''Retail Participant'' and for special pricing under the Retail Participant fee schedule, a participant must complete and submit to Nasdaq, as the Business Member, an application.

Continued

FINRA/Nasdaq TRF participant may qualify as a ''Retail Participant'' if ''substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.'' [7] Under Rule 7620A, TRF Retail Participants are assessed fees for each of their Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party activities on the FINRA/Nasdaq TRF. However, they may qualify for fee discounts and fee caps (Rule 7620A), and for securities transaction credits for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). Specifically, the FINRA/Nasdaq TRF offers two Retail Fee Discount Programs—one comprises volume-based discounts for Media/Contra Party and Non-Media/Contra Party activity and the other program is a combined fee cap for Retail Participants that engage in Media/Executing Party and Contra Party activity on the FINRA/Nasdaq TRFs.

A Retail Participant qualifies for the Retail Participant Contra Party Fee Discount and Cap Program to the extent that it achieves, during a given month, a qualifying volume of average daily Contra Party activity (Media, Non-Media, or both) in a particular Tape. Within each Tape, a qualifying Retail Participant will receive a volume-based discount on its monthly uncapped Contra Party activity charges relative to the standard rate ($0.013 per execution), which includes both Media/Contra Party and Non-Media/Contra Party activity, as follows:

Tier	Average daily executions per month per tier	Rate per execution, if uncapped	Maximum monthly charge, if capped
Tape A			
1	50,000–100,000	$0.0120	n/a
2	100,001–200,000	0.0072	n/a
3	200,001–300,000	0.0052	n/a
4	>300,000	0.0050	$32,000
Tape B			
1	15,000–30,000	$0.0120	n/a
2	30,001–60,000	0.0072	n/a
3	60,001–100,000	0.0052	n/a
4	>100,000	0.0050	$11,000
Tape C			
1	50,000–100,000	$0.0120	n/a
2	100,001–200,000	0.0072	n/a
3	200,001–300,000	0.0052	n/a
4	>300,000	0.0050	$32,000

A Retail Participant qualifies for the Retail Participant Combined Cap Program, when the Retail Participants engages in Media/Executing Party activity in addition to Contra Party activity on the FINRA/Nasdaq TRF, as follows:

Tier	Total daily average number of media/executing party trades over preceding three month period)	Maximum monthly charge, for all executing party/contra party activity
1	1,000–2,000	$50,000
2	2,001–4,000	25,000
3	>4,000	15,000

Retail Participants are assessed the lowest retail pricing program each month based on their qualifying activity.

In addition, under Rule 7620A, Retail Participants are subject to Comparison/Accept Fees (for transactions subject to the ACT Comparison process) at the rate of $0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares). They are also subject to a $0.03/side fee for clearing reports (to transfer a transaction fee charged by one member to another member), a $0.288/

The application form requires the participant to attest to its qualifications as a Retail Participant on the FINRA/Nasdaq TRF in which it is a participant and for which it seeks Retail Participant pricing. The participant must also attest to its reasonable expectation that it will maintain its qualifications for a one year period following the date of attestation. Once a participant has been designated as a Retail Participant, it must complete and submit a written attestation to Nasdaq on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant. *See* FINRA Rule 7620A.03.

[7] Pursuant to FINRA Rule 7260A.01, a ''Retail Order'' means ''an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

trade fee for late reports, a $0.50/query fee for submitting queries, and a $0.25 fee for making corrections to transactions (cancel, errors, inhibit, kill, break, and decline).

Currently, under Rule 7610A, FINRA members that report over-the-counter (''OTC'') transactions in NMS stocks to a FINRA/Nasdaq TRF for public dissemination or ''media'' purposes may receive quarterly transaction credits that equal a percentage of FINRA/Nasdaq TRF revenues that are attributable to the members' transactions.[8] A Retail Participant qualifies for transaction credits with no market share thresholds in order to make revenue share payout more accessible and to lower the overall trade reporting cost for a Retail Participant. The FINRA/Nasdaq TRF offers Retail Participants that achieve less than 0.5 percent Media/Executing Party market share in Tape A or C symbols a 75 percent payout of attributable transaction credits, and a 70 percent payout of attributable revenue in Tape B symbols for less than 0.35 percent Media/Executing Party market share during a given quarter. For higher market shares, Retail Participants receive the same percentage shares of attributable revenue as other participants in all Tapes.

Percentage market share	Percent of attributable revenue shared	Percent of attributable revenue shared (retail rarticipants)
Tape A:		
Greater than or equal to 2%	98	98
Less than 2% but greater than or equal to 1%	95	95
Less than 1% but greater than or equal to 0.50%	85	85
Less than 0.50% but greater than or equal to 0.10%	20	75
Less than 0.10%	0	75
Tape B:		
Greater than or equal to 2%	98	98
Less than 2% but greater than or equal to 1%	90	90
Less than 1% but greater than or equal to 0.35%	85	85
Less than 0.35% but greater than or equal to 0.10%	10	70
Less than 0.10%	0	70
Tape C:		
Greater than or equal to 2%	98	98%
Less than 2% but greater than or equal to 1%	95	95
Less than 1% but greater than or equal to 0.50%	85	85
Less than 0.50% but greater than or equal to 0.10%	20	75
Less than 0.10%	0	75

Proposed New Pricing for Retail Participants

Nasdaq, as the Business Member, proposes to charge no fees for trade reporting to the FINRA/Nasdaq TRF for Retail Participants. Specifically, Nasdaq proposes to eliminate the schedule of Retail Participant transaction charges in Rule 7620A, as well as the associated Retail Participant Contra Party Fee Discount and Cap and the Combined Cap Programs. Nasdaq also proposes to exempt Retail Participants from the schedule of generally applicable transaction charges, both for Non-Comparison/Accept and Comparison/Accept trade reports and for other fees relating to clearing reports to transfer transaction fees, late reports, queries, and corrective actions. Along with charging no trade reporting fees to Retail Participants, Nasdaq proposes to eliminate transaction credits for Retail Participants.

The proposed rule change is intended to improve the competitiveness of the FINRA/Nasdaq TRF for Retail Participants in light of recent initiatives by retail brokers to eliminate the fees they charge for executing retail customer transactions. As reported in the media, many large retail brokers, such as Charles Schwab, TD Ameritrade, E-Trade Securities, Interactive Brokers and Fidelity, have lowered commission trading fees to zero.[9] Nasdaq understands that these initiatives are placing pressure on retail brokers to find ways to reduce their operational costs as a means of offsetting their loss of retail trading commission revenues. Nasdaq believes that its proposal would support these efforts and attract Retail Participants to the FINRA/Nasdaq TRF.

Currently, FINRA/Nasdaq TRF has 63 participants designated as ''Retail Participants.'' From January 2019 to September 2019, these Retail Participants have incurred trade reporting fees that range from nearly $0 to $50,000 per month per firm. Under the proposed rule change, these Retail Participants will pay no fees going forward for their trade reporting activities. Meanwhile, during the same time period, Retail Participants with Media/Executing Party activity received securities transaction credits that ranged from $0 to $10,000 per quarter. Under the proposed rule change, Retail Participants will no longer be eligible for transaction credits.

No new product or service will accompany the proposed fee change.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 3, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[10] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. All similarly situated designated Retail Participants will be subject to the same fee and credit

[8] Under the Rule, a transaction is attributable to a FINRA member if a trade report submitted to the FINRA/Nasdaq TRF that the FINRA/Nasdaq TRF then submits to either of the SIPs identifies the FINRA member as the Executing Party on the transaction.

[9] *See* Kate Rooney, ''Battle for Zero Trading Fees Threatens Robinhood's Business Model and Next Leg of Growth,'' CNBC, Oct. 4, 2019, *www.cnbc.com/2019/10/04/battle-for-zero-trading-fees-pressures-robinhoods-next-leg-of-growth.html.*

[10] 15 U.S.C. 78*o*–3(b)(5).

structure and access to the FINRA/Nasdaq TRF is offered on fair and nondiscriminatory terms.

The Proposal Is Reasonable

Nasdaq, as the Business Member, believes the proposal to eliminate trade reporting fees under Rule 7620A and transaction credits under Rule 7610A for Retail Participants is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRF is subject to significant competitive forces in the market for trade reporting services for OTC trades in NMS stocks that constrain its pricing determinations in that market. Participants can freely and do shift their trade reporting activity between the various FINRA TRFs in response to pricing, product or service changes. Within this context, as well as the context discussed earlier in which several large Retail Participants have eliminated the fees that they previously charged to their retail customers to execute trades, the proposed rule change demonstrates that the FINRA/Nasdaq TRF is sensitive to Retail Participants' changing business models and their need to control operational costs. Nasdaq believes that the proposal is a reasonable means of strengthening the ability of the FINRA/Nasdaq TRF to compete for the trade reporting activity of retail firms given that the proposal will improve its attractiveness relative to that of the competing FINRA TRF.

The Proposal Is an Equitable Allocation of Credits and Charges

The proposed rule change will allocate fees and credits fairly among FINRA/Nasdaq TRF Participants. The proposal to offer free trade reporting for Retail Participants is an extension of the existing Retail Participant pricing program, through which the FINRA/Nasdaq TRF charges Retail Participants lower fees than Non-Retail Participants.[11] As discussed in FINRA's filing in 2018, it is equitable to charge Retail Participants lower fees because customers of Retail Participants generally include individuals who trade less frequently and report fewer trades to the FINRA/Nasdaq TRF than do other categories of customers. The Retail Pricing program was designed to ensure that such customers, and the participants that serve them, do not bear primary financial responsibility for helping the FINRA/Nasdaq TRF to recover rising costs, particularly increased operational and maintenance costs flowing from rising levels of trade reporting activity.[12] The current proposal is equitable because it will help Retail Participants to further reduce their operating costs, which they are under pressure to do as they eliminate their own retail customer trade commissions. Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.[13]

In addition to eliminating trade reporting fees for Retail Participants, Nasdaq also believes that it is equitable to eliminate the corresponding transaction credits for Retail Participants. The FINRA/Nasdaq TRF offers transaction credits to reward significant activity on the FINRA/Nasdaq TRF and offset trade reporting fees. To the extent that Retail Participants would no longer pay fees for reporting trades to the FINRA/Nasdaq TRF, the continuing payment of such credits would serve no purpose as there would be no fees to offset.

The Proposal Is Not Unfairly Discriminatory

Although Nasdaq intends for this proposal to benefit Retail Participants specifically, Nasdaq does not believe that it is unfair to do so. The Commission already permits the FINRA/Nasdaq TRF to apply lower pricing to Retail Participants.[14] The proposed rule change is merely an extension of this existing pricing program.

Moreover, any financial benefit that the proposal offers to Retail Participants will be limited in scope because the amount of the fees that Retail Participants pay for their reporting is already small, and the total amount of fees paid by Retail Participants is trivial relative to the total amount of fees that Non-Retail Participants pay.[15] Additionally, Nasdaq notes that the FINRA/Nasdaq TRF does not propose to adjust any of the Non-Retail Participant trade reporting fees to offset the loss of Retail Participant trade reporting fees.

Relatedly, Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.[16] Accordingly, the proposal will not require Non-Retail Participants to assume a larger role in supporting the operation of the FINRA/Nasdaq TRF.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

Nasdaq, as the Business Member, does not believe that the proposed rule change will place any category of Participant at a competitive disadvantage. As discussed above, all Retail Participants, whether they are large or small, and regardless of whether they report a large or small volume of trade reports to the FINRA/Nasdaq TRF, will incur no fees for their trade reporting activity on the FINRA/Nasdaq TRF. Participants are free to report their over-the-counter trades in NMS stocks to the competing FINRA TRF to the extent they believe that the fees, product or services provided by the FINRA/Nasdaq TRF are not attractive. Price competition between the FINRA TRFs is substantial, with trade reporting activity and market share moving freely between them in reaction to fee, product and service changes.

Lastly, Nasdaq notes that Retail Participants and Non-Retail Participants do not typically compete for the same business, such that Nasdaq does not expect the proposal to create a competitive advantage for Retail Participants relative to Non-Retail Participants.

Intermarket Competition

Nasdaq believes that the proposal will not impose a burden on competition among the FINRA trade reporting facilities because use of the FINRA/Nasdaq TRF is completely voluntary

[11] *See* Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–029).

[12] *See supra* note 11, at 42449–50.

[13] Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

[14] *See supra* note 11.

[15] Nasdaq has separately provided data to the Commission in support of these assertions, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

[16] Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

and subject to competition.[17] Nasdaq, as the Business Member, proposes this rule change to strengthen the competitive position of the FINRA/Nasdaq TRF with respect to retail trade reporting. Nasdaq believes its proposal will support increased competition in the market.

Nasdaq, as the Business Member, believes that the elimination of trade reporting fees for Retail Participants will be necessary for the FINRA/Nasdaq TRF to retain existing retail business and to compete for new such business, particularly in light of recent moves by large retail brokers to eliminate their own retail transaction fees and to reduce their operating costs accordingly. The competition, in turn, is free to modify its own fees and credits in response to this proposed rule change to maintain or increase its attractiveness to participants. Accordingly, Nasdaq believes that the risk that this proposed rule change will impose an undue burden on intermarket competition is extremely limited.

If market participants determine that the changes proposed herein are inadequate or unattractive, it is likely that the FINRA/Nasdaq TRF will lose market share as a result. Accordingly, the proposed rule change will not impair the ability of the other FINRA TRF to maintain its competitive standing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f)(2) of Rule 19b–4 thereunder.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2020–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–004 and should be submitted on or before March 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02746 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

[17] Because the FINRA/Nasdaq TRF and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Regulation S, SEC File No. 270–315, OMB Control No. 3235–0357

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation S (17 CFR 230.901 through 230.905) sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Regulation S clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be

submitted to OMB within 30 days of this notice.

Dated: February 7, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02781 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88134; File No. SR–IEX–2020–02]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees Pursuant to Rule 15.110

February 6, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 4, 2020, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission proposed changes to eliminate the IEX Enhanced Market Maker (''IEMM'') program set forth in IEX Rule 11.170 and make conforming changes to its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to eliminate the IEMM fee discounts.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate the IEX Enhanced Market Maker (''IEMM'') program set forth in IEX Rule 11.170 and to make conforming changes to its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to eliminate the IEMM fee discounts.

Background

IEX launched the IEMM program on February 1, 2018.[6] The IEMM program provides a fee discount to incentivize Members [7] to quote at and/or near the NBBO [8] in IEX Listed Securities [9] for a significant portion of the day. As specified in IEX Rule 11.170, a Member registered as an IEX Market Maker pursuant to Rule 11.150 in all securities listed on IEX [10] may be designated as an IEMM by meeting the monthly quoting criteria for the Inside Tier, the Depth Tier, or both.[11] Members designated as IEMMs qualify for a lower per-share rate charged for both displayed and non-displayed executions subject to either the Reduced or Standard Match Fees on the Exchange in securities priced at or above $1.00, as set forth in IEX Rule 11.170(a)(3) and the IEX Fee Schedule.

There are no longer any IEX Listed Securities, and it is thus not possible for any Member to qualify for designation as an IEMM and the applicable transaction fee discount.[12] Therefore, the Exchange is proposing to eliminate the IEMM program and delete IEX Rule 11.170 (designating it as ''Reserved'') and remove all references to the IEMM fee discounts from the IEX Fee Schedule. IEX believes this proposed rule change will eliminate any possible confusion about whether Members can qualify for the IEMM discounts.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act [13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using the Exchange's facilities; and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is consistent with these principles because it will remove obsolete rule text and fee provisions, thereby avoiding any potential confusion among Members. As noted in the Purpose section, there are no longer any IEX Listed Securities, and it is thus not possible for any Member to qualify for designation as an IEMM and the applicable transaction fee discount. The Exchange further believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory because the changes will apply equally to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but simply to remove obsolete rule text and fee provisions to avoid any potential confusion among Members.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 82636 (February 6, 2018), 83 FR 6059 (February 12, 2018) (SR–IEX–2018–02).

[7] *See* IEX Rule 1.160(s).

[8] The term ''NBBO'' means the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b). *See* IEX Rule 1.160(u).

[9] *See* IEX Rule 14.002(19).

[10] Supplementary Material .01 to Rule 11.170 provides a limited exception to the requirement that a Member must be a registered IEX Market Maker in all securities listed on IEX if (i) a Member does not act as a market maker in one or more IEX-listed securities on any other national securities exchange, and (ii) the Market Maker provides documentation, satisfactory to IEX Regulation, substantiating that such Member is unable to act as a market maker in one or more particular securities listed on IEX (a) in order to comply with specified legal or regulatory requirements, or (b) operational restrictions not exceeding 90 calendar days from the date the security first lists on the Exchange.

[11] *See* IEX Rule 11.170.

[12] IEX announced its listing business exit on September 23, 2019, which was effective on October 7, 2019. *See* IEX Trading Alert #2019–029 available at: *https://iextrading.com/alerts/#/85.*

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4)–(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [15] of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act 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–IEX–2020–02 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–IEX–2020–02. 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–IEX–2020–02 and should be submitted on or before March 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02749 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–794, OMB Control No. 3235–0737]

Proposed Collection; Comment Request; 30 Day Notice—Submission for OMB Review; Comment Request; Extension: Rule 22e–4 (30 Day Notice 2019)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

30 day notice—Submission for OMB Review; Comment Request

Extension:
Rule 22e–4 (30 Day Notice 2019)

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit [1] this existing collection of information to the Office of Management and Budget for extension and approval.

Section 22(e) of the Investment Company Act of 1940 (''Investment Company Act'') provides that no registered investment company shall suspend the right of redemption or postpone the date of payment of redemption proceeds for more than seven days after tender of the security absent specified unusual circumstances. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption for any amount of time, absent certain specified circumstances or a Commission order.

Rule 22e–4 under the Act [17 CFR 270.22e–4] requires an open-end fund and an exchange-traded fund that redeems in kind (''In-Kind ETF'') to establish a written liquidity risk management program that is reasonably designed to assess and manage the fund's or In-Kind ETF's liquidity risk. The rule also requires board approval and oversight of a fund's or In-Kind ETF's liquidity risk management program and recordkeeping. Rule 22e–4 also requires a limited liquidity review, under which a UIT's principal underwriter or depositor determines, on or before the date of the initial deposit of portfolio securities into the UIT, that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues and retains a record of such determination for the life of the UIT and for five years thereafter.

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Commission staff estimates that funds within 846 fund complexes are subject to rule 22e–4. Compliance with rule 22e–4 is mandatory for all such funds and In-Kind ETFs, with certain program elements applicable to certain funds within a fund complex based upon whether the fund is an In-Kind ETF or does not primarily hold assets that are highly liquid investments. The

[1] This 30-day notice supersedes the notice originally published in the **Federal Register** on February 5, 2020 (85 FR 6588, Feb. 5, 2020). That notice incorrectly contained the heading ''Proposed Collection''.

Commission estimates that a fund complex will incur a one time average burden of 40 hours associated with documenting the liquidity risk management programs adopted by each fund within a fund complex, in addition to a one time burden of 10 hours per fund complex associated with fund boards' review and approval of the funds' liquidity risk management programs and preparation of board materials. We estimate that the total burden for initial documentation and review of funds' written liquidity risk management program will be 42,300 hours.

Rule 22e–4 requires any fund that does not primarily hold assets that are highly liquid investments to determine a highly liquid investment minimum for the fund, which must be reviewed at least annually, and may not be changed during any period of time that a fund's assets that are highly liquid investments are below the determined minimum without approval from the fund's board of directors. We estimate that fund complexes will have at least one fund that will be subject to the highly liquid investment minimum requirement. Thus, we estimate that 846 fund complexes will be subject to this requirement under rule 22e–4 and that the total burden for preparation of the board report associated will be 11,844 hours.

Rule 22e–4 requires a fund or In-Kind ETF to maintain a written copy of the policies and procedures adopted pursuant to its liquidity risk management program for five years in an easily accessible place. The rule also requires a fund to maintain copies of materials provided to the board in connection with its initial approval of the liquidity risk management program and any written reports provided to the board, for at least five years, the first two years in an easily accessible place. If applicable, a fund must also maintain a written record of how its highly liquid investment minimum and any adjustments to the minimum were determined, as well as any reports to the board regarding a shortfall in the fund's highly liquid investment minimum, for five years, the first two years in an easily accessible place. We estimate that the total burden for recordkeeping related to the liquidity risk management program requirement of rule 22e–4 will be 3,384 hours.

We estimate that the hour burdens and time costs associated with rule 22e–4 for open-end funds, including the burden associated with (1) funds' initial documentation and review of the required written liquidity risk management program, (2) reporting to a fund's board regarding the fund's highly liquid investment minimum, and (3) recordkeeping requirements will result in an average aggregate annual burden of 25,380 hours,

UITs may in some circumstances be subject to liquidity risk (particularly where the UIT is not a pass-through vehicle and the sponsor does not maintain an active secondary market for UIT shares). On or before the date of initial deposit of portfolio securities into a registered UIT, the UIT's principal underwriter or depositor is required to determine that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues, and maintain a record of that determination for the life of the UIT and for five years thereafter. We estimate that 1,385 newly registered UITs will be subject to the UIT liquidity determination requirement under rule 22e–4 each year. We estimate that the total burden for the initial documentation and review of UIT funds' written liquidity risk management program would be 13,850 hours. We estimate that the total burden for recordkeeping related to UIT liquidity risk management programs will be 2,770 hours.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. ''An agency'' may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 6, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02733 Filed 2–11–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Centers Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Wednesday, February 12, 2020 at 11:00 a.m. EST.

ADDRESSES: Meeting will be held via conference call.

FOR FURTHER INFORMATION CONTACT: Alanna Falcone, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *alanna.falcone@sba.gov;* 202–619–1612.

If anyone wishes to be a listening participant or would like to request accommodations, please contact Alanna Falcone at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section l0(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose

The purpose of the meeting is to onboard the new members and discuss the following issues pertaining to the SBDC Program:

- SBA Briefing
- Member Introductions
- Annual Meetings
- Board Assignments

Nicole Nelson,

Acting Committee Management Officer.

[FR Doc. 2020–02732 Filed 2–11–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 16253 and # 16254; PUERTO RICO Disaster Number PR–00034]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4473–DR), dated 01/16/2020.

Incident: Earthquakes.

Incident Period: 12/28/2019 and continuing.

DATES: Issued on 02/05/2020.

Physical Loan Application Deadline Date: 03/16/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 10/16/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of PUERTO RICO, dated 01/16/2020, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Municipalities (Physical Damage and Economic Injury Loans): Arecibo, Ciales, Hormigueros, Juana Diaz, Las Marias, Mayaguez, Morovis, Orocovis, Sabana Grande.

Contiguous Municipalities (Economic Injury Loans Only):

Puerto Rico: Barceloneta, Florida, Manati, Santa Isabel, Vega Baja.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2020–02825 Filed 2–11–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11019]

Winnipeg, MB, Canada Hearing International Red River Board Report on Nutrient Targets

ACTION: Notice of public hearing; request for comments.

SUMMARY: The International Joint Commission is having a meeting and request public comment on recommendations by the International Red River Board (IRRB) on proposed nutrient concentration objectives and nutrient load targets for the Red River at the boundary between the United States and Canada. The IRRB's full report can be found on the IJC website at the following link: *www.ijc.org/what/engagement/public-comment-IIRB-nutrient-2020.*

DATES: *Public Hearing:* February 12, 2020, 7–9 p.m.; *Comments due:* February 28, 2020.

ADDRESSES: The public hearing will be held at Four Points by Sheraton Hotel Winnipeg South, 2935 Pembina Highway Winnipeg, Manitoba, Canada R3T 2H5. Comments will be accepted by the following methods:

- *Public hearing:* 2935 Pembina Highway Winnipeg, Manitoba, Canada R3T 2H5.
- *Mail:* 1717 H Street NW, Suite 845, Washington, DC 20006.
- *Email: bevacqauf@washington.ijc.org.*

FOR FURTHER INFORMATION CONTACT: Sarah Lobrichon (Ottawa), 613–992–5368, *lobrichons@ottawa.ijc.org* or Frank Bevacqua (Washington), 202–736–9024, *bevacqauf@washington.ijc.org.*

SUPPLEMENTARY INFORMATION: The Commission reports on water quality of the Red River as it crosses the boundary pursuant to a reference under Article IX of the Boundary Waters Treaty between the United States and Canada. Commission recommendations to the two federal governments under Article IX References of the Boundary Waters Treaty are not binding and not to be considered decisions of the two federal governments.

The International Red River Board was established by the Commission in part to assist in reporting on the water quality of the Red River as it crosses the boundary and to recommend amendments or additions to the water quality objectives approved by the U.S. and Canadian governments in 1968 when considered warranted by the Commission.

In the 2000s the IRRB identified nutrients as an issue of concern. The Board established a Water Quality Committee to develop recommendations for potential nutrient load allocations and/or targets. At the IRRB's September 2019 meeting the Board agreed to recommend the following nutrient concentration objectives and nutrient load targets for the Red River at the boundary between the U.S. and Canada:

- *Nutrient concentration objective:* Total Phosphorus 0.15 mg/L.
- *Total Nitrogen:* 1.15 mg/L.
- *Application:* Seasonal Average (April 1–October 30).
- *Nutrient load target:* Total Phosphorus 1,400 tonnes/year.
- *Total Nitrogen:* 9,525 tonnes/year.
- *Application:* Five year running average.

Commissioners will be present to hear comments at the above referenced public hearing in Winnipeg, Manitoba, Canada on February 12, 2020 from 7–9 p.m. A public comment period on the IRRB's report will also be open through February 28, 2020. Public input is essential to the Commission's consideration of a recommendation to the Governments of the United States and Canada.

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include investigating and reporting on issues of concern when asked by the governments of the two countries. www.ijc.org.

Frank L. Bevacqua,

Public Information Officer, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2020–02835 Filed 2–11–20; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

[Public Notice:11035]

Notice of Intent To Request Emergency Processing of Information Collection: Public Charge Questionnaire

ACTION: Public notice.

SUMMARY: The Department of State intends to seek emergency processing of proposed form DS–5540, Public Charge Questionnaire from the Office of Management and Budget (OMB). The Department will seek OMB approval of the form by February 24, 2020, so that the Department can implement its interim final rule on the public charge ground of visa ineligibility on this date. The Department also intends to respond, in the supporting statement drafted in support of the request for OMB approval, to public comments that it received in response to its request for public comments on the same form DS–5540 that was published in the **Federal Register** on October 24. The Department will publish another notice in the **Federal Register** once it has requested emergency processing from OMB.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests

for copies of the proposed collection instrument and supporting documents to Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485–8910, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

Abstract

On October 24, 2019, the Department published a notice in the **Federal Register** to announce that it was seeking OMB approval of the DS–5540, Public Charge Questionnaire, and invited public comment for a 60-day period. The 60-day comment period ended on December 23, 2019, and the Department received 92 comments. Approval of this form will permit the Department to implement the Department's interim final rule on public charge published on October 11, 2019.

The Department of Homeland Security has announced that it will begin implementation of its final rule on the public charge ground of inadmissibility on February 24, 2020, in all states other than Illinois. The Department now intends to seek emergency processing of the DS–5540 pursuant to 5 CFR 1320.13, because there is insufficient time to complete the ongoing process for OMB form approval under 5 CFR 1320.10 prior to February 24, 2020. The Department seeks to align the Department's standards with those of the Department of Homeland Security, to avoid situations where a consular officer will evaluate an alien's circumstances and conclude that the alien is not likely at any time to become a public charge, only for the Department of Homeland Security to evaluate the same alien when he seeks admission to the United States on the visa issued by the Department of State and find the alien inadmissible on public charge grounds under the same facts.

Carl C. Risch,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2020–02866 Filed 2–11–20; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11031]

Call for Expert Reviewers To Submit Comments on the Intergovernmental Panel on Climate Change (IPCC) Working Group I Contribution to the Sixth Assessment Report

The Department of State, in cooperation with the United States Global Change Research Program (USGCRP), requests expert review of the second-order draft of the IPCC Working Group I (WGI) contribution to the Sixth Assessment Report cycle (AR6), including the first draft of the Summary for Policymakers (SPM).

The United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) established the IPCC in 1988. As reflected in its governing documents, the role of the IPCC is to assess on a comprehensive, objective, open, and transparent basis the scientific, technical, and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts, and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy, although they may need to deal objectively with scientific, technical, and socio-economic factors relevant to the application of particular policies. The principles and procedures for the IPCC and its preparation of reports can be found at: *https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles.pdf* and *https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf.* In accordance with these procedures, IPCC documents undergo peer review by experts and governments. The purpose of these reviews is to ensure the reports present a comprehensive, objective, and balanced view of the subject matter they cover.

As part of the U.S. government review—starting March 2, 2020—experts wishing to contribute to the U.S. government review are encouraged to register via the USGCRP Review and Comment System (*https://review.globalchange.gov/*). Instructions and the second-order draft will be available for download via the system. In accordance with IPCC policy, drafts of the report are provided for review purposes only and are not to be cited or distributed. All technical comments received that are relevant to the text under review will be forwarded to the IPCC authors for their consideration. To be considered for inclusion in the U.S. government submission, comments must be received by April 2, 2020.

Experts may choose to provide comments directly through the IPCC's expert review process, which occurs in parallel with the U.S. government review: *https://apps.ipcc.ch/comments/ar6wg1/sod/.* To avoid duplication, experts are requested to submit comments via either the USGCRP or IPCC review websites, not both.

This notice will be published in the **Federal Register**.

Holly Kirking Loomis,

Acting Director, Office of Global Change, Department of State.

[FR Doc. 2020–02796 Filed 2–11–20; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on March 13, 2020, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the **SUPPLEMENTARY INFORMATION** section of this notice. Also the Commission published a document in the **Federal Register** on January 9, 2020, concerning its public hearing on February 6, 2020, in Harrisburg, Pennsylvania.

DATES: The meeting will be held on Friday, March 13, 2020, at 9 a.m.

ADDRESSES: The meeting will be held at the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the lower Susquehanna River region; (2) Resolution 2020–01 adopting the Commission's Fiscal Year 2021 Budget Reconciliation; (3) ratification/approval of contracts/grants; (4) Resolution 2020–02 adopting Final Rulemaking regarding consumptive use mitigation and adopting *Consumptive Use Mitigation Policy;* (5) Resolution 2020–03 adopting *Guidance for the Preparation Of A Metering Plan & A Groundwater Elevation Monitoring Plan For Water Withdrawals, Consumptive Uses, And Diversions (''Metering Plan Guidance'');* and (6) Regulatory Program projects.

This agenda is complete at the time of issuance, but other items may be added, and some stricken without further notice. The listing of an item on the agenda does not necessarily mean that the Commission will take final action on it at this meeting. When the Commission does take final action, notice of these actions will be published

in the **Federal Register** after the meeting. Any actions specific to projects will also be provided in writing directly to project sponsors.

The Metering Plan Guidance and Regulatory Program projects listed for Commission action were those that were the subject of public hearings conducted by the Commission on February 6, 2020, and identified in the notices for such hearings, which was published in 85 FR 1189, January 9, 2020.

The public is invited to attend the Commission's business meeting. Comments on the Metering Plan Guidance and Regulatory Program projects are subject to a deadline of February 17, 2020. Written comments pertaining to other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before March 10, 2020. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: February 6, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–02736 Filed 2–11–20; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: January 1–31, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above: *Grandfathering Registration Under 18 CFR part 806, subpart E:*

1. Duncansville Municipal Authority—Public Water Supply System, GF Certificate No. GF–202001075, Borough of Duncansville and Allegheny Township, Blair County, Pa.; Well 2; Issue Date: January 24, 2020.

2. Leatherstocking Corporation dba Otesaga Hotel—Leatherstocking Golf Course, GF Certificate No. GF–202001076, Town of Otsego, Otsego County, N.Y.; Otsego Lake and consumptive use; Issue Date: January 24, 2020.

3. Millersburg Area Authority—Public Water Supply System, GF Certificate No. GF–202001077, Millersburg Borough and Upper Paxton Township, Dauphin County, Pa.; Wells 1, 2, 3, 4, and 5, and Springs 1 through 7; Issue Date: January 24, 2020.

4. Village of New Berlin—Public Water Supply System, GF Certificate No. GF–202001078, Town of New Berlin, Chenango County, N.Y.; Sheffield Creamery Well; Issue Date: January 24, 2020.

5. Town of Owego—Water District #4, GF Certificate No. GF–202001079, Town of Owego, Tioga County, N.Y.; Wells 1 and 2; Issue Date: January 24, 2020.

6. Shawville Power, LLC—Shawville Station, GF Certificate No. GF–202001080, Bradford Township, Clearfield County, Pa.; West Branch Susquehanna River and consumptive use; Issue Date: January 24, 2020.

7. West Cocalico Township Authority—Public Water Supply System, GF Certificate No. GF–202001081, West Cocalico Township, Lancaster County, Pa.; Well 1; Issue Date: January 24, 2020.

8. Northern Cambria Municipal Authority—Public Water Supply System, GF Certificate No. GF–202001082, Northern Cambria Borough, Cambria County, Pa.; Hazeltine Mine and Miller Hollow; Issue Date: January 24, 2020.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: February 6, 2020.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2020–02735 Filed 2–11–20; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2019–0032]

Surface Transportation Project Delivery Program; Alaska Department of Transportation Second Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice announces and solicits comments on the second audit report for the Alaska Department of Transportation and Public Facilities (DOT&PF).

DATES: Comments must be received on or before March 13, 2020.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter

provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Jomar Maldonado, Office of Project Development and Environmental Review, (202) 366–1598, *Jomar.Maldonado@dot.gov,* or Mr. David Sett, Office of the Chief Counsel, (404) 562–3676, *David.Sett@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 60 Forsyth Street, 8M5, Atlanta, GA 30303. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The DOT&PF published its application for NEPA assumption on May 1, 2016, and made it available for public comment for 30 days. After considering public comments, DOT&PF submitted its application to FHWA on July 12, 2016. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that DOT&PF would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on August 25, 2017, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and DOT&PF considered comments and proceeded to execute the MOU. Effective November 13, 2017, DOT&PF assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. The first audit report of DOT&PF compliance was finalized on February 5, 2019. This notice announces the availability of the second audit report for DOT&PF and solicits public comment on the same.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C 327; 23 CFR 773.

Issued on: February 6, 2020.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program, FHWA Audit of the Alaska Department of Transportation

April 15–19, 2019

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) second audit of the Alaska Department of Transportation and Public Facilities' (DOT&PF) assumption of FHWA's project-level National Environmental Policy Act (NEPA) responsibilities and obligations pursuant to a 23 U.S.C. 327 Memorandum of Understanding (MOU). The DOT&PF entered the NEPA Assignment Program [1] after more than 8 years of experience making FHWA NEPA Categorical Exclusion (CE) determinations pursuant to 23 U.S.C. 326 (beginning September 22, 2009). Alaska's MOU was signed on November 3, 2017, and became effective on November 13, 2017. Three Federal-aid projects were excluded from the MOU, but the environmental process for these projects has since been completed. Currently, FHWA's NEPA responsibilities in Alaska include oversight and auditing of the DOT&PF's execution of the NEPA Assignment Program and certain activities excluded from the MOU such as projects advanced by direct recipient's other than DOT&PF.

The FHWA audit team began preparing for the site visit in October 2018. This preparation included a review of DOT&PF's NEPA project files, DOT&PF's response to FHWA's pre-audit information request (PAIR), and consideration of DOT&PF's self-assessment summary report. The audit team completed the site visit for the second audit April 15–19, 2019.

The audit team appreciates DOT&PF's responsiveness to questions on the status of their corrective actions for the first audit non-compliance and general observations. This report concludes with a status update for FHWA's observations from the first audit report.

The audit team finds DOT&PF in substantial compliance with the terms of the MOU in meeting the responsibilities it has assumed. This report does not identify any non-compliance observations; it does identify six general observations as well as several successful practices.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for highway projects. This program is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities for NEPA project decisionmaking, the State becomes solely responsible and solely liable for carrying out these obligations in lieu of and without further NEPA-related approval by FHWA.

The FHWA assigned responsibility for making project NEPA approvals and the responsibility for making other related environmental decisions for highway projects to DOT&PF on November 3, 2017, and became effective on November 13, 2017. The MOU specifies those FHWA responsibilities assigned to DOT&PF. Examples of responsibilities DOT&PF has assumed in addition to NEPA include Section 7 consultation under the Endangered Species Act (ESA) and consultation under Section 106 of the National Historic Preservation Act (NHPA).

This is the second of four required annual audits pursuant to 23 U.S.C. 327(g) and Part 11 of the MOU. Audits are the primary mechanism through which FHWA oversees DOT&PF's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal laws and policies, evaluating DOT&PF's progress toward achieving the performance measures identified in Section 10.2 of the MOU, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present the results of each audit in a report and make it available for public comment in the **Federal Register**.

The audit team included NEPA subject matter experts from FHWA offices in Juneau, Alaska; Washington, District of Columbia; Atlanta, Georgia; Sacramento, California; and Lakewood, Colorado.

Scope and Methodology

The audit team examined a sample of DOT&PF's NEPA project files, DOT&PF responses to the PAIR, and DOT&PF's

[1] Throughout this report, FHWA uses the term ''NEPA Assignment Program'' to refer to the program codified at 23 U.S.C. 327 (Surface Transportation Project Delivery Program).

Self-Assessment Summary report. The audit team also interviewed DOT&PF staff and reviewed DOT&PF policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: Program Management; Documentation and Records Management; Quality Assurance/Quality Control (QA/QC); Legal Sufficiency; Training; and Performance Measurement.

Project File Review: To consider DOT&PF staff adherence to program procedures and Federal requirements, the audit team selected a sample of individual project files for which the environmental review had been completed. The audit team did not evaluate DOT&PF's project-specific decisions, but rather compliance with assumed responsibilities and adherence to their own processes and procedures for project-level environmental decision making. The 43 sampled files included Programmatic CEs (actions approved in the Regional offices), CEs and Environmental Assessments (EAs) (approved in the Statewide Environmental Office (SEO)), and re-evaluations (approved by the same office as the original environmental document).

PAIR Review: The audit team reviewed the PAIR, which consisted of 61 questions about specific elements in the MOU that DOT&PF must implement. These responses were used to develop specific follow-up questions for the on-site interviews with DOT&PF staff.

DOT&PF Self-Assessment Review: The audit team reviewed DOT&PF's Self-Assessment summary report and used it to develop specific follow-up questions for the on-site interviews with DOT&PF staff. The NEPA Assignment Program MOU Section 8.2.5 requires the DOT&PF to conduct annual self-assessments of its QA/QC procedures and performance.

Interviews: The audit team conducted 18 on-site interviews and 1 phone interview with DOT&PF staff. Interviewees included staff from each of DOT&PF's three regional offices and its SEO. The audit team invited DOT&PF staff, middle management, and executive management to participate in interviews to ensure they represented a diverse range of staff expertise, experience, and program responsibility. In addition, the audit team conducted two phone interviews of attorneys with the Alaska Department of Law and three phone interviews with staff at the U.S. Fish and Wildlife Service (USFWS) Field Office in Anchorage and the Conservation Planning Assistance Branch in Fairbanks.

Policy/Guidance/Manual Review: Throughout the document reviews and interviews, the audit team verified information on DOT&PF's NEPA Assignment Program including DOT&PF policies, guidance, manuals, and reports. This included the Environmental Program Manual (EPM), the NEPA Assignment QA/QC Plan, the NEPA Assignment Program Training Plan, and the NEPA Assignment Self-Assessment Summary report.

Overall Audit Opinion

This report identifies six observations and several successful practices. The audit team finds DOT&PF is substantially in compliance with the provisions of the MOU, has carried out the environmental responsibilities it assumed through the NEPA Assignment Program, and is taking steps to address observations identified in the first audit.

Non-Compliance Observations

The audit team made no non-compliance observations in the second audit.

Observations and Successful Practices

This section summarizes the audit team's observations of DOT&PF's NEPA Assignment Program implementation, and successful practices DOT&PF may want to continue or expand. The audit team has observations which DOT&PF may use to improve processes, procedures, or outcomes. The DOT&PF may have already taken steps to address or improve upon the audit team's observations, but at the time of the audit they appeared to be areas where DOT&PF could make improvements. Successful practices are positive results that FHWA would like to commend DOT&PF on developing. These may include ideas or concepts that DOT&PF has planned but not yet implemented. Successful practices and observations are described under the six MOU topic areas: Program Management, Documentation and Records Management, QA/QC, Training Program, Performance Measures, and Legal Sufficiency.

This audit report provides an opportunity for DOT&PF to take further actions to improve their program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of the third audit. The third audit report will include a summary discussion that describes progress since this audit.

Program Management

Program Management includes the overall administration of the NEPA Assignment Program. The audit team noted the following successful practices and observations related to Program Management.

Successful Practices

Based on interviews, DOT&PF plans to update the entire EPM on a 2-year cycle. The SEO indicated that in the interval between EPM updates, topic-specific memoranda would be developed in collaboration with the regional DOT&PF offices to address guidance, policy, or procedure change in advance of the 2020 EPM revision.

The FHWA acknowledges DOT&PF's current efforts to develop guidance memoranda in the following areas:

- *Floodplains:* The DOT&PF identified the need for additional floodplain guidance. The audit team observed that the SEO and some regional staff have varying expectations regarding analysis of floodplain encroachments and QA/QC requirements. The DOT&PF is encouraged to revise the EPM to clarify what technical analyses and reports may be required as part of complete project documentation, particularly in the context of hydraulic analyses.
- *Planning and Environment Linkage (PEL):* The DOT&PF has issued a request for proposals for a consultant to develop PEL guidance. The audit team found PEL studies were evaluated as actions needing a NEPA review, however PEL studies are not subject to NEPA. The audit team learned through interviews that DOT&PF have several ongoing PEL studies, so guidance will be timely.

The audit team, through its interviews, noted successful DOT&PF collaboration with the USFWS, the National Marine Fisheries Service (NMFS), and the State Historic Preservation Office (SHPO). The SEO leadership stated that agencies are engaged to maintain and improve relationships.

- Interviews with USFWS staff confirmed that USFWS has a good working relationship with DOT&PF. Both DOT&PF regional staff and USFWS desire to have more regular meetings to further improve relationships and accelerate project delivery. Examples of discussion topics include: Developing best management practices, discussing programmatic approaches, and improving scoping documents.
- The DOT&PF Self-Assessment Summary report describes the SEO coordination with NMFS to clarify procedures for biological opinions and

has issued a guidance memo to DOT&PF regional offices.

- The SEO and regional Section 106 subject matter experts collaborate with SHPO on concerns, challenges, and compliance issues.

Observation #1: Applicability of Existing Interagency Agreements

Section 5.1.3 of the MOU requires the DOT&PF to work with FHWA and the resource agencies to modify existing interagency agreements within 6 months of the effective date of the MOU. The audit team recognizes that the four different resource agencies' (U.S. Army Corps of Engineers, NMFS, USFWS, and U.S. Soil Conservation Service (now Natural Resources Conservation Service)) Programmatic Agreements (PA) that were executed in 1985 have not been applicable since the DOT&PF implemented the CE Assignment program (23 U.S.C. 326) in 2009. Therefore, none of these agreements apply to the current NEPA Assignment Program under 23 U.S.C. 327. The DOT&PF staff may find it useful to meet with all its resource agency partners to clarify their role under the NEPA Assignment Program. Also, if DOT&PF chooses to enter into interagency agreements per Section 5.1.4 of the MOU, DOT&PF may develop provisions that make the program more efficient and clarify the State's role as decisionmaker.

Observation #2: DOT&PF Delegation of Authority for NEPA Approvals

Section 3.3.1 of the MOU requires DOT&PF to make NEPA approvals (CE determinations, findings of no significant impact, or records of decision). Project file reviews and interviews conducted for this audit revealed inconsistencies regarding the delegation of NEPA approvals within DOT&PF. Although interviews with SEO staff indicated SEO has a written blanket delegation of signature authority for the office, interviews with DOT&PF regional offices revealed variability in procedures for Regional Environmental Managers (REMs) to delegate their approval authority. Some of the project files the team reviewed contained emails that addressed the delegation of approval authority for that project while other project files did not. The review team encourages DOT&PF to review and standardize its procedures for delegation of authority for NEPA approvals to clarify approval responsibility and minimize risk of individuals making NEPA approvals without authorization.

Observation #3: Staff Capacity

Sections 4.2.1. and 4.2.2. of the MOU outline the requirements for the State's commitment of resources and adequate organizational and staff capability. The audit team learned through interviews that SEO and some regional offices have had moderate to high staff turnover since the MOU took effect. Several of the recent SEO leadership staff have retired or been promoted. This issue is a recurrence from Audit #1 (see Audit #1, report Observation #3). Under the MOU, DOT&PF must maintain ''adequate'' organizational and staff capability, including appropriate environmental, technical, legal, and managerial expertise to perform its assumed responsibilities under this MOU and applicable Federal laws. Although any determination of adequacy is a challenge given the expectation for normal staff turnover, DOT&PF could consider monitoring the State's requirement under the MOU to maintain organizational and staff capacity, as well as potential staff adequacy risks to the program. We encourage DOT&PF leadership to assess the adequacy of organizational and staff capacity annually. This assessment would help the State demonstrate that DOT&PF is actively evaluating its commitment of resources with respect to this MOU requirement.

Documentation and Records Management

From March 1, 2018, through October 30, 2018, DOT&PF made 161 project decisions (*e.g.,* Section 4(f) approvals) and NEPA approvals. By employing both judgmental and random sampling methods, the audit team reviewed NEPA project documentation for 43 of these decisions/approvals.

Observation #4: Documentation of Environmental Commitments

Section 5.1.1 of the MOU requires the State to follow Federal laws, regulations, policy, and procedures to implement the responsibilities assumed. Project file reviews and interviews conducted for this audit revealed inconsistencies regarding how DOT&PF documents environmental commitments and ensures that environmental commitments made during the NEPA process are carried through the project development process and into construction. Interviews with DOT&PF regional offices and SEO contained specific questions about environmental commitments. Reponses revealed varying regional office staff opinions regarding Environmental Impact Analyst (Analyst) and REM responsibilities related to commitments and SEO concern with the transference process from NEPA through design and into construction. To address an issue with environmental commitments identified in an earlier program review by the Alaska Division, DOT&PF developed a short-term corrective action to prepare written guidance that would be implemented no later than December 31, 2018. This written guidance has been drafted, but not implemented as of April 15–19, 2019, the week of the audit site visit.

Quality Assurance/Quality Control

Under the MOU, DOT&PF agreed to carry out regular QA/QC activities to ensure the assumed responsibilities are conducted in accordance with applicable law and the MOU. The audit team noted the following successful practices and observations related to QA/QC.

Successful Practices

Analysts in the DOT&PF south coast region have a role in the QA/QC process, as they conduct peer reviews of the documentation in their project files. This encourages consistency in the project review process among Analysts and functions as a valuable training opportunity so that all Analysts can recognize errors and omissions.

The REMs and SEO staff stated that collaboration among regional staff, SEO, and legal staff during development of draft environmental documents, where it occurred, improved document quality. Further, they stated this reduced the number of errors found during formal QA/QC and when reviewing project files during DOT&PF's Self-Assessment.

Once DOT&PF implements its Comprehensive Environmental Data and Reporting (CEDAR) System, DOT&PF stated that the system should eliminate inconsistencies in project name, project identifiers and environmental documentation which DOT&PF also identified as a potential issue in its Self-Assessment Summary report. By transferring project information from another State system, CEDAR should provide a system control that enhances data integrity.

Observation #5: Inconsistency in Project Termini and Statewide Transportation Improvement Program (STIP)

Section 3.3.1 of the MOU requires DOT&PF, at the time of NEPA approval (CE determination, finding of no significant impact, or record of decision), to ensure that the project's design concept, scope, and funding is consistent with current planning documents. The audit team's document

review of a sample of projects found one project file with an inconsistency between project termini shown in a project plan and that described in the STIP. The DOT&PF's Self-Assessment found similar inconsistencies. This was observed both for programmatic CEs (approved at the Region level) and non-programmatic CEs (approved at the SEO level) that are required to undergo a QC review by REMs in accordance with Section 3.3.2 of the EPM. To help eliminate these types of inconsistencies, DOT&PF may want to consider providing additional tools to REMs for use when approving environmental documents, such as a checklist of items to be verified.

Training

Under Part 12 of the MOU, DOT&PF committed to implementing training necessary to meet its environmental obligations assumed under the NEPA Assignment Program. The DOT&PF also committed to assessing its need for training, developing a training plan, and updating the training plan on an annual basis in consultation with FHWA and other Federal agencies as appropriate.

Successful Practices

The SEO worked with a consultant to customize an advanced NEPA training based on the Alaska NEPA Assignment Program to make it specific for issues typically encountered in Alaska.

The DOT&PF south coast region uses a memorandum to serve as a part of all new employee's orientation and as a precursor to more formal training. The REM issues it to all new Analysts. This memorandum outlines to whom the new employees should talk in their first 2 weeks to help firmly establish relationships and gain an overview of environmental program components.

All DOT&PF regional offices implement individual coaching and on-the-job training practices, which are important mechanisms by which Analysts, especially new Analysts, acquire some of the knowledge and skills necessary to perform their job functions.

Observations:

Observation #6: Training Plan Update

Section 12.2 of the MOU commits DOT&PF and FHWA to update the DOT&PF training plan annually in consultation with other Federal agencies as appropriate. The DOT&PF's Training Plan had not yet been updated as of the date of the site visit. The audit team encourages the State to re-evaluate its entire plan for training in light of its budget limitations, so that there is a realistic means of delivering necessary training, especially for new staff. The State may consider further leveraging its Web-based training capabilities to meet training needs.

Performance Measures

The MOU's inclusion of performance measures for the DOT&PF to develop and track progress fits well within FHWA's overall approach to have programs define specific goals that could be measured by existing data or by combinations or indexes of existing data. For example, in recent years, FHWA has promulgated performance measure requirements in support of National Performance Management for freight programs (January 18, 2017), pavement and bridge condition (January 18, 2018), as well as for FHWA's Offices of Safety (March 15, 2016), and Operations (May 2012). In each of these cases, as well as for the FHWA Strategic Plan, there is a requirement for the development and definition of objectives/goals and indicators/measures of overall program performance.

According to Part 10 of the MOU, DOT&PF will report its progress toward meeting its performance measures in the self-assessment summary that is considered by FHWA's audit team. The January 2019 DOT&PF Self-Assessment Summary report identified 13 performance measures for which 2 could not be reported upon due to lack of baseline, and 4 measures were based on one approved EA project. Therefore, almost half of the performance measures could not be reported because either no baseline for comparison was developed or the measure was constrained to apply only to EA or Environmental Impact Statement (EIS) projects, even though more than 95 percent of NEPA approvals were CEs.

Legal Sufficiency

During the audit period, one attorney from the Alaska Department of Law (DOL) Transportation Section continued to be assigned to the NEPA Assignment Program. The assigned attorney has significant experience with Federal-aid highway projects and the Federal environmental process. The attorney works directly with DOT&PF staff on project environmental documents. Based on the interviews, the review process followed the standard set forth in the EPM, with the attorney involved early in project development, normally reviewing NEPA documents prior to their circulation to resource agencies for comment. During the audit period, the attorney reviewed three EAs and multiple re-evaluations of an older EIS. The attorney did not issue a formal finding of legal sufficiency during the audit period, as he did not review a Final EIS or Section 4(f) Evaluation (per 23 CFR 771.125[b] or 774.7[d]) during that time.

The DOL management stated that while only one attorney is currently assigned to the program, should workload increase significantly, DOL would assign another attorney to NEPA work.

Status of Observations From Audit #1 (April 2018)

This section describes the actions DOT&PF has taken (or is taking) in response to audit observations, including non-compliance observations made during the first audit. Any non-compliance observations require DOT&PF to take corrective action.

Non-Compliance Observation #1: Ensure an Opportunity for a Public Hearing is Provided When Required. The DOT&PF responded that FHWA's non-compliance observation was made prior to the completion of the DOT&PF's EPM (February 2018). Based on the current edition of the EPM, the requirements for public hearing based on project type are adequately documented and no additional instances of non-compliance were found by the audit team during the second audit. The FHWA has found the corrective action to be satisfactory in addressing the non-compliance observation.

Observation #1: Programmatic Section 106 compliance and Section 4(f) compliance. The DOT&PF recognized possible risk in applying its Section 106 programmatic agreement (PA) to projects that require integration of the Section 106 process with Section 4(f) requirements. To address this risk, SEO consulted with SHPO and created a letter of agreement to provide DOT&PF's notification to SHPO of the intent to make a *de minimis* determination on a project processed under the Section 106 PA as a streamlined review/programmatic allowance. In this audit, the team did not identify instances where the streamlined Section 106 form had been used to support a Section 4(f) use.

Observation #2: Lack of a Process to Implement Planning Consistency at Time of a NEPA Decision. In response to this observation, DOT&PF stated that the project manager is responsible to review and document the availability of funding per Section 420.1.1 of the Preconstruction Manual and that this information is communicated to environmental staff through Section 1.1.1 of the EPM. The DOT&PF also referenced Section 1.3.1 of the EPM in

supporting the planning consistency requirements. However, the audit team found an inconsistency regarding a project's termini as shown in a project plan and how that project was described in the STIP. This was identified as an observation in this audit (Observation #5). The audit team recognizes that DOT&PF's manuals offer general guidance, but may want to consider providing additional tools to REMs for use when approving environmental documents, such as a checklist of items to be verified to ensure consistency with transportation plans.

Observation #3: Staff Capacity, Workload, and Turnover. During Audit #1, several DOT&PF staff explained through interviews, that since the State's entry into the full NEPA Assignment Program, staff's required review and documentation efforts dramatically increased, and because of the increased workload, the region office did not have sufficient resources to manage the workload associated with the NEPA Assignment Program. The DOT&PF stated as part of its responses for this audit that it has adequate staffing, continually monitors the number of environmental documents in development, and discusses regional workloads during the weekly NEPA manager's meetings. Through interviews, the team learned that if an individual region experiences an unusually large workload and reports it to SEO, projects would be distributed among NEPA managers. However, based on interviews conducted for this audit, workload for some staff remains a concern.

Observation #4: Government-to-Government Consultation Protocol. The DOT&PF has committed to conducting tribal consultation in its program Section 106 PA. The DOT&PF's EPM also identifies a process for coordinating with tribes that is sensitive to any request for Government-to-Government consultation. The DOT&PF leadership indicated that staff have received training, and is using monthly Cultural Resources Team (CRT) meetings to increase staff understanding of the Government-to-Government process.

Observation #5: Section 106 Compliance and Effect Determination. The DOT&PF examined and corrected the project-specific issues. It also indicated that it held a Section 106 training for environmental analysts in June of 2018, created specifically for Alaska DOT&PF by a consultant with input from SEO staff. The cross-regional CRT, which includes the SHPO office DOT&PF liaison, meets on a monthly basis to discuss Section 106 procedures and compliance. The CRT was recognized by the DOT&PF Commissioner during the last audit year for outstanding team performance.

Observation #6: Identify QC staff roles and responsibilities in the DOT&PF's QA/QC Plan. The DOT&PF has defined the roles of the Project Development Team members in the EPM manual and QA/QC Plan (EPM Sections 4.3, 5.4, 11.3, and 11.4) when project development teams are used.

Observation #7: Consider ways to accommodate training needs and timely delivery. The DOT&PF has hired consultants to develop interactive online training, and deliver in-person training to the regional offices. In-person training was conducted in June, October, November of 2018, and February 2019. This training included Section 106, Section 4(f), and the Alaska National Interest Lands Conservation Act. In addition, training is being offered in multiple formats: Manual review including the EPM, online courses, on-the-job training, and mentoring.

Next Steps

The FHWA provided this draft audit report to DOT&PF for a 14-day review and comment period. The audit team considered DOT&PF comments in developing this draft audit report. The FHWA will publish a notice in the **Federal Register** for a 30-day comment period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). The FHWA will publish the final audit report in the **Federal Register**.

[FR Doc. 2020–02794 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Advisory Committee for Safety (TRACS)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Transit Advisory Committee for Safety (TRACS).

DATES: The meeting will be held on February 25, 2020, from 8:00 a.m. to 4:30 p.m., and February 26, 2020, from 8:00 a.m. to 2:00 p.m., Eastern Standard Time (EST).

Requests to attend the meeting must be received by February 18, 2020. Requests for disability accommodations must be received by February 18, 2020. Vendors may request to present information to the committee on emerging technology and innovations in the transit safety focus areas of employee safety reporting, roadway worker protection, and suicide and trespass prevention. Each vendor presentation will be limited to 10 minutes or less. Requests to verbally address the committee during the meeting must be submitted along with a written copy of the remarks to DOT by February 20, 2020. Requests to submit written materials to be reviewed during the meeting must be received no later than February 14, 2020.

ADDRESSES: The meeting will be held at the National Highway Institute (NHI), 1310 North Courthouse Road, Arlington, Virginia, 22201. Any committee related requests should be sent by email to *TRACS@dot.gov.* A copy of the meeting minutes will be available on the TRACS web page at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.* The detailed agenda will be posted on the TRACS web page at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs* one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366–1783, *Henrika.Buchanan@dot.gov;* or Kara Waldrup, Program Analyst, FTA Office of Transit Safety and Oversight, (202) 366–7273, *Kara.Waldrup@dot.gov;* or *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation created TRACS in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C. App. 2) to provide information, advice, and recommendations to the Secretary and FTA Administrator on matters relating to the safety of public transportation systems.

II. Agenda

- Welcome Remarks/Introductions
- Facility Use/Safety Briefing
- Review of TRACS Tasks and Work Plan
- Safety Focus Area Presentations and Discussion Groups
- Future TRACS Activities
- Public Comments
- Summary of Deliverables and Concluding Remarks

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **ADDRESSES** section.

There will be a total of 60 minutes allotted for oral comments from members of the public at the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, to include the individual's name, address, and organizational affiliation to the person listed in the **ADDRESSES** section.

Written comments for consideration by TRACS during the meeting must be submitted no later than the deadline listed in the **DATES** section, to ensure transmission to TRACS members prior to the meeting. Comments received after that date will be distributed to the members but may not be reviewed prior to the meeting.

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2020–02800 Filed 2–11–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA). The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before July 13, 2020.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice follow. *Project name and location:* METRO Gold Line Bus Rapid Transit (BRT) Project, Twin Cities Metropolitan Area, Minnesota. *Project Sponsor:* The Metropolitan Council, Saint Paul, Minnesota. *Project description:* The project consists of a 10-mile bus transitway in Ramsey and Washington counties in the eastern part of the Twin Cities Metropolitan Area. The Project will operate parallel to I–94 and connect downtown Saint Paul with the suburban cities of Maplewood, Landfall, Oakdale and Woodbury. The Project will use 8 existing stations in downtown Saint Paul, two new stations at Union Depot, and 11 existing stations located along the remainder of the alignment. The Project will operate in a guideway dedicated to BRT for 66 percent of its route (new road construction) and in mixed traffic for 34 percent. *Final agency action:* Section 4(f) *de minimis* impact determination; executed Section 106 Programmatic Agreement, dated January 07, 2020; METRO Gold Line Bus Rapid Transit Project Finding of No Significant Impact, dated January 17, 2020. *Supporting Documentation:* METRO Gold Line Bus Rapid Transit Environmental Assessment, September 26, 2019.

Authority: 23 U.S.C. 139(l)(1).

Mark A. Ferroni,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2020–02726 Filed 2–11–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0063; Notice 1]

General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: General Motors, LLC, (GM) has determined that certain model year (MY) 2010–2017 GMC Terrain motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* GM filed a noncompliance report dated May 15, 2019. GM subsequently petitioned NHTSA on June 7, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of GM's petition.

DATES: The closing date for comments on the petition is March 13, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of

Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

• *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.

• Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: GM has determined that certain MY 2010–2017 GMC Terrain motor vehicles do not fully comply with paragraph S10.15.6 and Table XIX of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). GM filed a noncompliance report dated May 15, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* GM subsequently petitioned NHTSA on June 7, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of GM's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

II. Equipment and Vehicles Involved: Approximately 726,959 MY 2010–2017 GMC Terrain motor vehicles manufactured between May 21, 2009 and July 13, 2017 are potentially involved.

III. Noncompliance: GM explains that the noncompliance is that the subject vehicles are equipped with lower beam headlamps that do not meet the photometry requirements of paragraph S10.15.6 and Table XIX of FMVSS No. 108. Specifically, a reflection from the headlamps' housing is directed 80 degrees outboard and 45 degrees upward, as measured from each lamp's optical axis, which dimly illuminates two small areas high above the vehicle. When tested, this reflection from a single point on each lamp burns at 450–470 cd, more than three times brighter than the designated maximum of 125 cd at test points 10° U to 90° U.

IV. Rule Requirements: Paragraph S10.15.6 and Table XIX of FMVSS No. 108 includes the requirements relevant to this petition. Each replaceable bulb headlamp must be designed to conform to the photometry requirements of Table XVIII for upper beam and Table XIX for lower beam as specified in Table II-d for the specific headlamp unit and aiming method, when tested according to the procedure of paragraph S14.2.5 using any replaceable light source designated for use in the system under test.

V. Summary of GM's Petition: GM described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, GM submitted the following reasoning:

1. *The refection has no effect on vehicle safety for oncoming or surrounding vehicles.* The narrow reflection in question does not create a safety risk for oncoming or surrounding drivers, due to the extreme angle of the reflection. This angle, 80 degrees outboard and 45 degrees upward from each lamp's optical axis, is far above the range where the reflection could cause glare for oncoming or surrounding drivers, including the industry-recognized ''glare points'' referenced in Table XIX of FMVSS No. 108 at the following ranges: 0.5° U–1.5° L to L, i° U–1.5° L to L, 0.5° U–1° R to R, 1.5° U–° R to R.

2. *The reflection has no effect on vehicle safety for drivers of the subject vehicles.* The areas illuminated by the narrow reflections in question are not visible to drivers of the subject vehicles. These two small areas appear high above the vehicle, one to the far left and the other to the far right of the vehicle, well outside of the driver's view.

GM says, while these reflections may be somewhat perceptible in certain extremely dense fog or snow conditions, there would be no effect on vehicle safety due to the small size and far outboard location in the driver's peripheral field of view. Any detectable light would be negligible compared to other outside sources of illumination such as glare from oncoming traffic or fog glare forward of the vehicle from any FMVSS-compliant headlamp.

3. *GM is aware of only a single customer inquiry associated with this condition, and is not aware of any crashes or injuries.* GM reviewed all relevant field data and found just a single customer inquiry within the US and Canadian vehicle population of nearly 820,000 vehicles sold, 726,595 of which in the US and 92,747 in Canada, over eight model years. The customer stated, ''Left head lamp seems to have a portion of the light that shines up in the trees at near a 45-degree angle.'' GM identified no other related field reports, including in warranty, TREAD, VOQ, and legal data.

4. *The headlamps comply with recognized industry standards.* GM cited S6.1.1 of the SAE International Standard J1383, *Performance Requirements for Motor Vehicle Headlamps* (May 26, 2010), which sets forth certain industry-recognized intensity and size limits on headlamp photometrics. Specifically, for a zone extending 20° left to 20° right, and 10° to 60° up from the lamp optical axis, the light projected cannot exceed 550 candelas and cannot occupy more than five percent of the zone's total area. The reflection from the subject lamps is well outside of this zone. Even if the reflections were within this zone, the headlamps would remain compliant, as the reflection would not exceed the maximum of five percent of the total area or the maximum of 550 candelas.

5. *The headlamps comply with applicable requirements for global regions, including UNECE R1123.* S6.2.4 and Annex 3, Figure B of UNECE R112 specify photometric test points for the passing beam (*i.e.,* lower beam headlamp). The photometric points extend to 4° above the lamp optical axis. The subject reflection is well above those test points.

6. *The subject condition has been corrected for service parts and does not affect current-generation vehicles.* GM is purging all affected service and replacement headlamps from dealer stock. Stanley has redesigned service and replacement headlamps to add graining to the inadvertent reflecting surfaces, which will prevent the reflections that are the cause of the issue. These redesigned lamps are expected to be available June 12, 2019. Current-generation GMC Terrain vehicles (model years 2018 and newer) use a different headlamp design and are not affected by this condition.

GM concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–02729 Filed 2–11–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0851]

Agency Information Collection Activity: Status of Loan Account—Foreclosure or Other Liquidation

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0851'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0851'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Status of Loan Account—Foreclosure or Other Liquidation.

OMB Control Number: 2900–0851.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA Form 26–0971 is used when requesting the repurchase of a loan. The holder of a delinquent vendee account is legally entitled to repurchase the loan by VA when the loan has been continuously in default for 3 months and the amount of the delinquency equals or exceeds the sum of 2 monthly installments.

Affected Public: Individuals or households.

Estimated Annual Burden: 10 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 20.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–02786 Filed 2–11–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Agency Information Collection Activity: Designation of Beneficiary Government Life Insurance and Supplemental Designation of Beneficiary Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved

collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0020'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Designation of Beneficiary Government Life Insurance VA Form 29–336 and Supplemental Designation of Beneficiary Government Life Insurance VA Form 29–336a.

OMB Control Number: 2900–0020.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by the insured to designate beneficiaries and select an optional settlement to be used when the insurance matures by death. The information is required to determine the claimant's eligibility to receive the proceeds. The information on the form is required by law, 38 U.S.C. Sections 1917, 1949 and 1952.

Affected Public: Individuals and households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–02755 Filed 2–11–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rental and Utility Assistance for Certain Low-Income Veteran Families

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Supportive Services for Veteran Families (SSVF) Program has enabled grantees to augment available housing options for homeless Veterans in high-rent burden communities by increasing the rental assistance for up to 2 years before recertification. This notice establishes locations where the SSVF grantees can place Veterans in housing with this rental subsidy.

DATES: SSVF grantees can place Veterans in housing with the rental subsidy described in title 38 Code of Federal Regulations (CFR) 62.34(a)(8), effective October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. John Kuhn, Homeless Program Office, Supportive Services for Veteran Families Program Office, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8596. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 28, 2019, the Department of Veterans Affairs published a final rule, which revised its regulations that govern the SSVF Program, which are authorized under section 2044 of title 38 United States Code and 84 **Federal Register** 45074. This rule, which amended 38 CFR 62.34(a)(6) and (8), enables of SSVF grantees to provide rental assistance in certain areas where the limited availability of affordable housing makes it difficult to reduce a community's population of homeless Veterans. Through the provision of these subsidies, the pool of available housing can be expanded as program participants have access to a broader rental market. Section 62.34(a)(8) states that extremely low-income Veteran families and very low-income Veteran families who meet the criteria of section 62.11 may be eligible to receive a rental subsidy for a 2-year period without recertification. Section 62.34(a)(8) further states that the applicable counties will be published annually in the **Federal Register**. This notice provides the eligible counties for Fiscal Year 2020.

Locations: This rental subsidy will be available in the District of Columbia and the following counties:

California: Los Angeles, San Francisco, Alameda, San Diego, Santa Clara, Contra Costa, Kern, Imperial, San Bernardino, Riverside, Orange, Marin, and San Mateo.

Washington: King.

Hawaii: Honolulu.

Illinois: Cook.

New York: New York, Bronx, Queens, Kings, and Richmond.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 6, 2020, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–02734 Filed 2–11–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Availability: Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding availability.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of 1-year renewal funding for the 11 currently operational Fiscal Year (FY) 2020 VA Homeless Providers Grant and Per Diem (GPD) Program Special Need Grant recipients and their collaborative VA Special Need partners (as applicable) to submit renewal applications for assistance under the Special Need Grant component of VA's Homeless Providers GPD Program. The focus of this NOFA is to encourage applicants to continue services to the

homeless Special Need Veteran population. This NOFA contains information concerning the program, application process, and amount of funding available.

DATES: February 12, 2020.

An original, signed, dated, and completed renewal application for assistance under VA's GPD Program and associated documents must be received by the GPD Program Office by 4:00 p.m. Eastern Time on April 27, 2020. (See application requirements below.)

Applications may not be sent by facsimile or email. In the interest of fairness to all competing applicants, this deadline is firm as to date and time, and VA will treat any application received after the deadline as ineligible for consideration. Applicants should take this firm deadline into account and make early submission of their materials to avoid risk of ineligibility due to unanticipated delays or other delivery-related problems.

Applications must be physically delivered (*e.g.,* in person, or by U.S. Postal Service, FedEx, United Parcel Service, or any other type of courier). The VA GPD National Program Office staff will accept the application and date stamp it immediately at the time of arrival. This is the date and time that will determine if the deadline is met for these types of deliveries.

ADDRESSES: An original signed, dated, completed, and collated grant renewal application and all required associated documents must be submitted to the following address: VA National Grant and Per Diem Program Office, 10770 North 46th Street, Suite C–200, Tampa, Florida 33617. Applications must be received by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Jeffery L. Quarles, Director, Grant/Per Diem, (673/GPD), VA National Grant and Per Diem Program Office, 10770 North 46th Street, Suite C–200, Tampa, Florida 33617, 1 (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: Grant and Per Diem Special Need Grant Program.

Announcement Type: Renewal.

Funding Opportunity Number: VA–GPD–SN–FY2020.

Catalog of Federal Domestic Assistance Number: 64.024, VA Homeless Providers Grant and Per Diem Program.

I. Funding Opportunity Description

A. *Purpose:* This NOFA announces the availability of funds to provide 1-year funding assistance under VA's Homeless Providers GPD Program for the 11 operational GPD Special Need recipients and their collaborative VA partners (as applicable). Eligible applicants may obtain grant assistance to cover additional operational costs that would not otherwise be incurred, but for the fact that the recipient is providing supportive housing beds and services for the following Special Need homeless Veteran populations:

(1) Women;

(2) Chronically mentally ill; or

(3) Individuals who have care of minor dependents.

B. *Definitions:* Section 61.1 of title 38, Code of Federal Regulations contains definitions of terms used in the GPD Program. Eligible applicants should review these definitions to ensure their proposed populations meet the specific requirements.

Funding applied for under this NOFA may be used for the provision of service and operational costs to facilitate the following for each targeted group:

Women

(1) Ensure transportation for women, especially for health care and educational needs; and

(2) Address safety and security issues including segregation from other program participants if deemed appropriate.

Chronically Mentally Ill

(1) Help participants join in, and engage with, the community;

(2) Facilitate reintegration with the community and provide services that may optimize reintegration, such as life-skills education, recreational activities, and follow-up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

Individuals Who Have Care of Minor Dependents

(1) Ensure transportation for individuals who have care of minor dependents, and their minor dependents, especially for health care and educational needs;

(2) Provide directly or offer referrals for adequate and safe child care;

(3) Ensure children's health care needs are met, especially age-appropriate wellness visits and immunizations; and

(4) Address safety and security issues, including segregation from other program participants if deemed appropriate.

C. *Eligibility Information:* To be eligible, an applicant must be a currently operational FY 2020 VA Homeless Providers GPD Program Special Need Grant recipient with or without a collaborative VA Special Need partner, who was awarded this grant based on the NOFA published in the **Federal Register** on April 22, 2019, 84 FR 16762. Furthermore, if the applicant currently has a collaborative project and its VA partner no longer wishes to continue, the applicant will be ineligible for an award under this NOFA.

D. *Cost Sharing or Matching:* None.

E. *Authority:* 38 United States Code §§ 2011, 2012, 2061, as implemented in regulation at 38 Code of Federal Regulations (CFR) 61.

II. Award Information

A. *Overview:* This NOFA announces the availability of 1-year renewal funding for use in FY 2021 for the 11 currently operational FY 2020 VA Homeless Providers GPD Program Special Need Grant recipients and their collaborative VA Special Need partners (as applicable) to submit renewal applications for assistance under the Special Need Grant component of VA's Homeless Providers GPD Program.

B. *Funding Priorities:* None.

C. *Allocation of Funds:* Approximately $3 million is available for the current Special Need Grant component of VA's Homeless Providers GPD Program. Funding will be for a period beginning on October 1, 2020 and ending on September 30, 2021. The Special Need per diem payment will be the lesser of:

(1) One hundred percent of the daily cost of care estimated by the Special Need Grant recipient for furnishing services to homeless Veterans with special needs that the Special Need Grant recipient certifies to be correct, minus any other sources of income; or

(2) Two times the current VA State Home Program per diem rate for domiciliary care.

Special Need awards are subject to: FY 2020 funds availability; the recipient meeting the performance goals as stated in the grant application; statutory and regulatory requirements; and annual inspections.

Applicants should ensure their funding requests and operational costs are based on the 12-month period above and should be in line with expenditures from the prior year. Requests cannot exceed the amount obligated under their FY 2020 award. Applicants should note unexpended funding from FY 2020 awards will be deobligated.

D. *Funding Actions:* Applicants will be notified of any further additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any of the conditions for grant award within the specified timeframe, VA reserves the right to not award funds to that applicant and to use the funds available for other Special Need applicants. Following receipt and confirmation that this information is accurate and in acceptable form, the applicant will execute an agreement with VA in accordance with 38 CFR 61.61.

E. *Grant Award Period:* Applicants that are selected will have a maximum of 1 year beginning on October 1, 2020, and ending on September 30, 2021, to utilize the Special Need funding. Funds unexpended after the September 30, 2021, deadline will be deobligated.

F. *Funding Restrictions:* No part of a Special Need Grant may be used for any purpose that would significantly change the scope of the specific GPD project for which a capital GPD was awarded. As a part of the review process, VA will review the original project and subsequent approved program changes of the previous FY 2016 original Special Need applications and the FY 2020 renewal grants to ensure significant scope changes have not occurred, displacing other homeless Veteran populations.

Note: Changes to the Special Need population the applicant currently serves will not be allowed.

Special Need funding may not be used for capital improvements or to purchase vans or real property. However, the leasing of vans or real property may be acceptable. Questions regarding acceptability should be directed to VA's National GPD Program Office at the number listed in Contact Information. Applicants may not receive Special Need funding to replace funds provided by any Federal, state, or local government agency or program to assist homeless persons.

III. Application and Submission Information

Content and Form of Application: Applicants should ensure that they include all required documents in their application and carefully follow the format described below. Submission of an incorrect, incomplete, or incorrectly formatted application package will result in the application being rejected at the beginning of the process. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other Special Need applicants.

IV. Application Documentation Required

A. *Letter from Applicant:* Applicants must submit a letter on their organization letterhead stating the intent to apply for renewal funding and agreement for VA to evaluate their previously awarded FY 2016 Special Need application and FY 2020 renewal grant for scoring purposes. In addition, the letter must state the model (see listing below) to which that application will be linked and that the applicant agrees, as a condition of funding under this NOFA, that they will provide the services as outlined in that application, along with any VA-approved changes in scope, and that the applicant's FY 2016 required forms and certifications still apply for the period of this award.

B. *Models:* Bridge Housing; Low Demand; Clinical Treatment; Hospital to Housing; or Service Intensive Transitional Housing.

C. *Performance Goals:* Applicants must submit documentation of the applicant meeting the performance goals as stated in the FY 2016 original grant Special Need application and carried forward to their FY 2020 renewal grant, as evidenced by their last VA project inspection.

D. *Letter from VA Collaborative Partner (if applicable):* If the FY 2016 Special Need Grant was a collaborative grant, the applicant must submit an updated letter of commitment, or an updated Memorandum of Agreement (MOA) from the VA collaborative partner stating that VA will continue to meet its objectives, or provide its duties as outlined in the original MOA in FY 2016.

Note: If the applicant currently has a collaborative project and its VA partner no longer wishes to continue, then the applicant will be ineligible for an award under this NOFA.

E. *Other Submission Requirements:* None.

F. *Submission Dates and Times:* An original, signed, and dated application package, including all required documents, must be received in the GPD Program Office: VA National Grant and Per Diem Program Office, 10770 North 46th Street, Suite C–200, Tampa, Florida 33617, by 4:00 p.m. Eastern Standard Time on the application deadline date.

Applications must be received by the application deadline. Applications must arrive as a complete package, to include VA collaborative partner materials (see Application Requirements). Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

V. Application Review Information

A. *Criteria for Special Need Grants:* Rating criteria may be found at 38 CFR 61.40.

B. *Review and Selection Process:* Review and selection process may be found at 38 CFR 61.40.

Selections will be made based on criteria described in the FY 2016 application and additional information as specified in this NOFA.

C. *Award Notice:* Although subject to change, the GPD Program Office expects to announce grant awards during the late fourth quarter of FY 2020 (September). The initial announcement will be made by news release which will be posted on VA's National GPD Program website at *www.va.gov/homeless/gpd.asp.* Following the initial announcement, the GPD Program Office will mail notification letters to the grant recipients. Applicants who are not selected will be mailed a declination letter within 2 weeks of the initial announcement.

D. *Administrative and National Policy:* It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless Veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

(1) Awardees will be required to support their request for payments with adequate fiscal documentation as to income and expenses.

(2) All awardees that are selected in response to this NOFA must meet the requirements of the current edition of the Life Safety Code of the National Fire Protection Association as it relates to their specific facility. Applicants should note that all facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code. Applicants should consider this when submitting their grant applications, as no additional

funds will be made available for capital improvements under this NOFA.

(3) Each program receiving Special Need funding will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless Veterans in the program.

(4) Monitoring will include at a minimum, a quarterly review of each GPD grantee's progress toward meeting performance goals, including the applicant's internal goals and objectives in helping Veterans attain housing stability, adequate income support, and self-sufficiency as identified in each GPD grantee's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure payment is accurate.

Each funded program will participate in the VA's national program monitoring and evaluation as these monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each GPD-funded program.

Applicants with questions regarding the funding from previous Special Need awards should contact the VA Homeless Providers GPD Program Office prior to application.

A full copy of the regulations governing the GPD Program is available at the GPD website at *http://www.va.gov/HOMELESS/GPD.asp.*

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 6, 2020, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–02769 Filed 2–11–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Agency Information Collection Activity: Create Payment Request for the VA Funding Fee Payment System

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0474'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0474'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Create Payment Request for the VA Funding Fee Payment System (VA Form 26–8986).

OMB Control Number: 2900–0474.

Type of Review: Extension of a currently approved collection.

Abstract: A funding fee must be paid to VA before a loan can be guaranteed. The funding fee is payable on all VA-guaranteed loans, *i.e.,* Assumptions, Manufactured Housing, Refinances, and Real Estate purchase and construction loans. The funding fee is not required from veterans who are eligible purple heart recipients, veterans who are in receipt of compensation for service-connected disability, veterans in receipt of compensation for service-connected disability, or veterans who, but for receipt of retirement pay, would be entitled to receive compensation for their service-connected disability. Loans made to the unmarried surviving spouses of veterans (who have died in service or from service-connected disability) are exempted from payment of the funding fee, regardless of whether the spouse has his/her own eligibility, provided that the spouse has used his/her eligibility to obtain a VA-guaranteed loan. For a loan to be eligible for guaranty, lenders' must provide a copy of the Funding Fee Receipt or evidence the veteran is exempt from the requirement of paying the funding fee. The receipt is computer generated and mailed to the lender ID number address that was entered into an Automated Clearing House (ACH) service.

Affected Public: Business or other for profit.

Estimated Annual Burden: 13,334 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 400,000.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–02785 Filed 2–11–20; 8:45 am]

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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191, 192, and 195

Pipeline Safety: Safety of Underground Natural Gas Storage Facilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191, 192, and 195

[Docket No. PHMSA–2016–0016; Amdt. Nos. 191–27; 192–126; 195–103]

RIN 2137–AF22

Pipeline Safety: Safety of Underground Natural Gas Storage Facilities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is publishing this final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGSFs). On December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in response to the 2015 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, ''Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage'' (First Edition, July 2015); and API RP 1171, ''Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs'' (First Edition, September 2015). The IFR required each provision in the API RPs to apply as mandatory (*i.e.,* each ''should'' statement would apply as a ''shall'') unless an operator provides written justification for not implementing the practice, including an explanation for why it is impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for reconsideration, PHMSA has determined that the RPs, as originally published, will provide PHMSA with a stronger basis upon which to base enforcement than the IFR. This final rule also addresses recommendations from commenters and a petition for reconsideration of the IFR by modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk management requirements for solution-mined salt caverns.

DATES: This final rule is effective on March 13, 2020. The Director of the Federal Register approved the incorporation by reference on January 18, 2017.

FOR FURTHER INFORMATION CONTACT:

Technical questions: Byron Coy, Senior Technical Advisor, by telephone at 609–771–7810 or by email at *byron.coy@dot.gov.*

General information: Ashlin Bollacker, Technical Writer, by telephone at 202–366–4203 or by email at *ashlin.bollacker@dot.gov.*

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I. Executive Summary

A. Purpose of This Final Rule

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the pipeline safety regulations applicable to underground natural gas storage facilities (UNGSFs). PHMSA is amending the UNGSF regulations in response to comments and recommendations received on its interim final rule (IFR) published on December 19, 2016 (81 FR 91860). The IFR implemented PHMSA's authority to regulate UNGSFs and the Congressional mandate in section 12 of the PIPES Act (Pub. L. 114–183) to establish minimum safety standards for depleted-hydrocarbon reservoirs, aquifer reservoirs, and solution-mined salt caverns used for the storage of natural gas.[1] Congress issued the mandate to PHMSA following a large-scale natural gas leak at the Aliso Canyon UNGSF in Southern California on October 23, 2015. The mandate required PHMSA to establish minimum safety standards for UNGSFs within two years of the PIPES Act issuance on June 22, 2016. To meet the mandate's deadline—and address the urgent need for safer storage of natural gas—PHMSA published the IFR with a 60-day comment period. The IFR went into effect on January 18, 2017.

Since that time, PHMSA has considered public comments and a petition for reconsideration of the IFR and is modifying the minimum safety standards for UNGSFs in this final rule accordingly. PHMSA has also further reviewed the Final Report of the Interagency Task Force on Natural Gas Storage Safety[2] to ensure any amendments in this final rule are consistent with the Task Force's recommendations to PHMSA.[3] As detailed in this final rule, PHMSA believes these changes will reduce regulatory burdens and reduce costs for industry and gas consumers while sustaining safety and protecting the environment.

B. Summary of the Major Provisions

Consistent with the IFR, this final rule maintains the incorporation by reference of American Petroleum Institute (API) Recommended Practices (RPs) 1170 and 1171 (the RPs) as the basis of the minimum safety standards in 49 CFR part 192. API RP 1170, ''Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage''[4] has recommended practices for solution-mined salt cavern facilities used for natural gas storage and covers facility geomechanical assessments, cavern well design and drilling, solution mining techniques,

[1] For a description of these storage types and other basic information about underground natural gas storage, see *https://www.eia.gov/naturalgas/storage/basics/.*

[2] ''Ensuring Safe and Reliable Underground Natural Gas Storage,'' Final Report of the Interagency Task force on Natural Gas Storage Safety; October 2016. See *https://www.energy.gov/downloads/report-ensuring-safe-and-reliable-underground-natural-gas-storage.*

[3] In addition to their comments on the IFR, on March 17, 2017, the State of Texas and the Texas Railroad Commission petitioned the U.S. Court of Appeals for the Fifth Circuit for review of the IFR under 49 U.S.C. 60119(a). *See State of Texas* v. *PHMSA,* No. 17–60189 (5th Cir. Mar. 17, 2017). On April 24, 2017, the court granted INGAA and AGA's motions to intervene in the litigation. On July 19, 2017, the court granted a joint motion to hold the petition for review in abeyance pending the issuance of this final rule.

[4] API Recommended Practice 1170 ''Design and Operation of Solution-mined Salt Caverns used for Natural Gas Storage (First Edition, July 2015).

and operations, including monitoring and maintenance practices. API RP 1171, ''Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs'' [5] has recommended practices for natural gas storage in depleted oil and gas reservoirs and aquifers, and focuses on storage well, reservoir, and fluid management for functional integrity in design, construction, operation, monitoring, maintenance, and documentation practices. Both RPs describe ways to maintain the functional integrity of design, construction, operation, monitoring, maintenance, and documentation practices for UNGSFs. The RPs contain numerous provisions that use the term ''shall'' to denote a minimum requirement necessary to comply with the RP. The RPs also use non-mandatory terms such as ''should,'' ''may,'' and ''can'' to denote a recommendation that is advised, but not required.

This final rule amends the IFR in six primary ways. First, PHMSA adopts the RPs without modification to the non-mandatory terms. In the IFR, PHMSA adopted the RPs by modifying the non-mandatory provisions (*i.e.,* statements containing ''should'' and other non-mandatory terms) as mandatory requirements (*i.e.,* ''shall''). PHMSA provided that operators could deviate from the modified statements by providing a justification in their procedure manuals as to why the provision was ''not practicable and not necessary for safety'' at their specific facility. Accordingly, with this final rule, PHMSA also no longer requires operators to provide written justifications as to why they would not have performed a ''should'' provision.

Second, this final rule is formalizing requirements and deadlines for operators to develop and implement their integrity management (IM) programs and to conduct their baseline risk assessments for UNGSFs. As noted by commenters and petitioners, the API RPs function as an IM system for UNGSFs, which requires more time to implement than the IFR allowed. After considering these comments and recommendations, PHMSA is relaxing the timeline for completing initial assessments of the reservoirs, caverns, and wells. PHMSA discusses these new requirements and deadlines in Section III–C, ''Compliance Timelines.''

Third, this final rule includes a requirement for solution-mined salt caverns to follow the same risk management practices as depleted-hydrocarbon reservoirs and aquifers that apply to the physical characteristics and operations of the facility (*i.e.,* follow section 8 of API RP 1171). Since the publication of the IFR, PHMSA has observed that many operators of solution-mined salt caverns are voluntarily using section 8 of API RP 1171 to supplement the risk management practices in section 10 of API RP 1170. While most salt-cavern UNGSFs have a risk-management program in place, section 8 of API RP 1171 provides more prescriptive practices than API RP 1170 for how an operator must develop, implement, and document a program to manage risks that could affect the functional integrity of the storage operation. Extending the applicability of the recommended practices in section 8 of 1171 closes a potential critical safety gap for salt-cavern storage facilities and may prevent future failures at these facilities. PHMSA has codified this practice in the final rule to ensure consistency across all UNGSF facilities.

Fourth, PHMSA is narrowing the scope of reportable events and changes at facilities. In addition to annual data reporting and National Registry information, the IFR required operators to notify PHMSA of certain changes and events and their facilities, such as incidents and safety-related conditions. Since the IFR, PHMSA received many notifications for routine maintenance activities, which was not the intent of the regulation. Operators are not required to notify PHMSA of regular maintenance. To make this clear, PHMSA is limiting notification of changes to a facility 60 days prior to the following events: (1) All plugging or abandonment activities (regardless of costs), and (2) construction or maintenance that requires a workover rig and costs $200,000 or more. PHMSA is also applying an emergency exemption to the 60-day notification requirements, which PHMSA overlooked in the IFR.

Fifth, this final rule is revising the definition of an ''underground natural gas storage facility.'' The PIPES Act amended 49 U.S.C. 60101(a) to define an ''underground natural gas storage facility'' as ''a gas pipeline facility that stores natural gas in an underground facility, including—a depleted hydrocarbon reservoir, an aquifer reservoir; or a solution-mined salt cavern reservoir.'' The IFR incorporated a modified version of this definition in part 192. Part 192 covers the transportation of natural gas by pipeline. PHMSA discovered through the public comments on the IFR that the placement of the definition in part 192 created questions for operators as to where a gas pipeline facility ended, and regulations for a UNGSFs began. To remedy this confusion, PHMSA is revising the definition of an ''underground natural gas storage facility'' to exclude other components of a gas pipeline or gas pipeline facility covered elsewhere in part 192, and eliminate any potential overlap. PHMSA discusses the revised definition and the reason for keeping it in part 192 later in this document.

Sixth, PHMSA is changing the name of the reporting portal to the ''National Registry of Operators'' (formerly the ''National Registry of Pipeline and LNG Operators''). Additionally, PHMSA is revising the name of the online portal's web address from ''*http://opsweb.phmsa.dot.gov*'' to ''*https://portal.phmsa.dot.gov*.'' These changes are throughout parts 191, 192, and 195.

C. Costs and Benefits

Consistent with Executive Order (E.O.) 12866, PHMSA has prepared a Regulatory Impact Analysis (RIA) that includes an assessment of the benefits and costs of this final rule, as well as reasonable alternatives. PHMSA published an RIA to accompany the IFR as well. This final RIA incorporates input from public comments on the IFR and the initial RIA. PHMSA has issued the final RIA concurrently with this final rule, and it is available in the docket (PHMSA–2016–0016).

The annualized cost savings for this final rule, relative to the IFR, are estimated to be $11 million, applying a 7 percent discount rate. The benefits of this final rule come from making permanent the safety measures in the IFR and RPs 1170 and 1171, which API and other stakeholders developed to prevent leaks and blowouts before they occur. The safety measures adopted through the IFR and this final rule will prompt operators to undertake or hasten preventive and mitigative measures, as well as IM actions, such as mechanical integrity tests, that will reduce the probability of releases.

The IFR reduced the likelihood and magnitude of catastrophic or operational natural gas releases by promoting safer practices through the incorporation of the recommended practices into the pipeline safety regulations. This final rule continues to require these same practices. For example, operators are required to assess the mechanical integrity of each storage well, evaluate the likelihood of failures at these wells, and determine the next steps to remedy conditions that could precede the

[5] API Recommended Practice 1170 ''Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs'' (First Edition, September 2015).

failures. Operators are also required to incorporate safety best practices when designing and constructing new wells, which could further prevent catastrophic failures.

This final rule also adds a requirement for all solution-mined salt caverns to follow the risk management practices in section 8 of RP 1171. Per the IFR, PHMSA had only required operators of solution-mined salt caverns to follow the risk management practices in section 10 of RP 1170. The language in section 10, requires operators to take a ''holistic and comprehensive approach to monitoring cavern integrity,'' without providing specifics as to how to implement that approach. Post-IFR, during preliminary inspections, PHMSA observed operators of solution-mined salt caverns applying the framework of the risk management practices in section 8 of RP 1171. While RP 1171 applies to depleted hydrocarbon reservoirs and aquifer reservoirs, it offers a framework for risk management and monitoring that is translatable to other types of underground storage facilities. PHMSA expects that other operators of solution-mined salt caverns would benefit from a more specific framework for implementing the ''holistic and comprehensive approach to monitoring cavern integrity'' required in section 10 of 1170.

Additionally, codifying the requirement for these operators to follow both section 8 of RP 1171 and section 10 of RP 1170 ensures consistent safety requirements across all UGS facilities. This change may cause those operators who were not already (voluntarily) applying API RP 1171 as a framework for monitoring cavern integrity to undertake stronger risk management practices, which could ultimately reduce the risk of an incident. However, PHMSA considers this action part of the baseline requirements to follow a ''holistic and comprehensive approach to monitoring cavern integrity'' already prescribed through the IFR. As a result, PHMSA does not expect an additional financial burden to operators beyond that already in place through the IFR.

The IFR required operators to provide a written justification for each non-mandatory provision of the RPs that they did not perform. This final rule removes that recordkeeping burden on operators. Operators experience cost savings from the removal of requirements associated with deviations from the RPs, including technical reviews by subject matter experts and recordkeeping burdens, and reductions in the notifications burden.

II. Background

A. Overview of Underground Natural Gas Storage

Underground storage of natural gas plays a critical role in the nation's energy independence and reliability. Notably, having a surplus of natural gas provides a buffer from the seasonal variations in supply and demand, creating price stability for customers. Over the past ten years, natural gas storage has increased 16 percent, prompted, in part, by significant growth in domestic shale-gas production.

There are three principal types of underground natural gas storage fields, each with different geological characteristics and capabilities that govern their suitability for storage. The three types are depleted hydrocarbon reservoirs, aquifer reservoirs, and solution-mined salt caverns. Depleted hydrocarbon reservoirs are the most common type of storage, representing approximately 80 percent of the total working gas capacity in the United States. As the name implies, these facilities are repurposed from previous oil or gas production and converted to gas storage fields.[6] Aquifer reservoirs are natural water-bearing formations, also converted to gas storage, and represent roughly 9 percent of the total working gas capacity in the United States. Solution-mined salt caverns (salt domes) are geological formations that leached out of salt deposits. These facilities represent only about 10 percent of the total working-gas capacity but provide high withdrawal and injection rates relative to their working gas capacity.[7]

Of the 403 active UNGSFs in the United States, approximately 60 percent of the facilities are interstate, and 40 percent of the facilities are intrastate.[8] The total storage capacity at these fields was 9,236 billion cubic feet (Bcf), and the total working gas capacity was 4,815 Bcf. Facilities identified as interstate represented 63 percent of total storage capacity and 65 percent of working gas capacity.

Interstate UNGSFs serve interstate facilities, such as providing storage for interstate gas transmission pipelines.[9] These types of storage facilities commonly receive surplus gas from interstate pipelines during warmer months and then send it back into the product stream during colder winter months. Since these UNGSFs serve interstate facilities and PHMSA has exclusive pipeline safety jurisdiction over the design, construction, operation, and maintenance of interstate gas pipeline facilities, the standards in this final rule will affect all interstate UNGSFs.

Intrastate UNGSFs, on the other hand, are facilities that provide gas storage for intrastate pipelines, most notably local gas distribution companies (LDCs). These storage facilities serve intrastate pipelines that are contained entirely within a particular State and that do not fall within the jurisdiction of the Federal Energy Regulatory Commission (FERC). As discussed more fully below, these intrastate ''gas pipeline facilities'' are generally subject to the IFR and this final rule. Intrastate UNGSFs may continue to also be subject to State regulations provided that: (a) The otherwise applicable State regulation does not conflict with the Federal minimum safety standards established in the final rule, and (b) the applicable State authority has filed a certification with PHMSA to participate as a full State partner under the new Federal program and to receive Federal funding through PHMSA.

B. Underground Storage Incidents and Regulatory History

While rare, serious incidents at underground storage facilities have occurred. For instance, on April 7, 1992, an uncontrolled release of highly volatile liquids from a salt-dome storage cavern near Brenham, Texas, formed a heavier-than-air gas cloud that exploded. Three people died in the accident, with an additional 21 people treated for injuries at area hospitals. Property damage from the accident exceeded $9 million.

Following its accident investigation, the National Transportation Safety Board (NTSB) published pipeline safety recommendation No. P–93–9 regarding underground storage. Recommendation P–93–9 asked PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), to develop safety requirements for storage of highly volatile liquids and natural gas

[6] Energy Information Administration (EIA). 2015. ''The Basics of Underground Natural Gas Storage.'' November 16, 2015. Retrieved from *http://www.eia.gov/naturalgas/storage/basics/* (Accessed March 2019).

[7] Total working gas capacity percentages do not sum to 100 percent due to rounding.

[8] PHMSA's 2018 annual report data show 403 active underground natural gas storage fields in the United States as of 2017, distributed across 31 states.

[9] Under 49 U.S.C. 60101(a)(6), an ''interstate gas pipeline facility'' (including an interstate UNGSF) is defined as ''a gas pipeline facility—(A) used to transport gas; and (B) subject to the jurisdiction of the [FERC] under the Natural Gas Act (15 U.S.C. 717 *et seq.*).'' The term ''transporting gas'' is defined in § 60101(a)(21) as ''the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce . . .''

in underground facilities, including a requirement that all pipeline operators perform safety analyses of new and existing underground geologic storage systems to identify potential failures, determine the likelihood that each failure will occur, and assess the feasibility of reducing the risk.[10]

In response to the NTSB's safety recommendation, RSPA held a public meeting [11] to determine what actions it should take, if any, regarding the regulation of underground storage of natural gas and hazardous liquids. The participants expressed mixed views on whether RSPA should begin to regulate ''downhole'' pipe and underground storage. Most participants spoke favorably of industry safety practices and State regulation but saw no immediate need for Federal regulatory action.

On July 1, 1997, RPSA issued an advisory bulletin (ADB–97–04) to inform UNGSF owners and operators of the availability of guidelines for the design and operation of underground storage facilities. Specifically, the advisory bulletin pointed to the safety standards guide from the Interstate Oil and Gas Compact Commission (IOGCC) [12] and API as appropriate for use by pipeline operators and State regulatory agencies. The IOGCC guide provided safety standards for the design, construction, and operation of gas storage caverns. API had published guidelines for the underground storage of liquid hydrocarbons. RP 1114, ''Design of Solution-Mined Underground Storage Facilities,'' June 1994, provided basic guidance on the design and development of new solution-mined underground storage facilities. RP 1115, ''Operation of Solution-Mined Underground Storage Facilities,'' September 1994, provided guidance on the operation of solution-mined underground hydrocarbon liquid or liquefied petroleum gas storage facilities.

Another catastrophic natural gas leak happened in January 2001 after a wellbore failed at the Yaggy storage field near Hutchinson, Kansas. The natural gas migrated nine miles underground, where it eventually surfaced through abandoned wells. Once at the surface, the natural gas exploded, killing two people and destroying two businesses.[13] After a month, the flares burned off, with the ultimate loss of 143 million cubic feet (MCF) of natural gas from the storage field.

These incidents at UNGSFs alerted operators and regulators to consider assessing the safety of these facilities. By 2012, API had begun developing additional guidance for the safety of UNGSFs. API developed RP 1170 and 1171 over several years, based on input from many industry stakeholders, including regulators such as PHMSA, FERC, and five State regulatory agencies, as well as the API Midstream Group. In July 2015, API issued RP 1170, ''Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage.'' API RP 1170 provides recommendations and requirements for geo-mechanical assessments, cavern well design and drilling, solution mining techniques, operations and maintenance procedures, and practices for salt caverns. In September 2015, API issued RP 1171, ''Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs,'' which focuses on storage well, reservoir, and fluid management for functional integrity in design, construction, operations and maintenance procedures, monitoring, and documentation practices. The RPs appropriately recognize the variety and diversity of UNGSFs used throughout the United States and are not limited to addressing facilities in a single State, basin, geological setting, or well type.

C. Aliso Canyon Incident

Shortly after the publication of the industry safety standards RP 1170 and RP 1171, another major UNGSF incident occurred. On October 23, 2015, Southern California Gas Company (SoCalGas) discovered a leak that manifested into the largest methane leak from a natural gas storage facility in U.S. history. Well SS–25 in the Aliso Canyon storage field, located in Los Angeles County, California, leaked for nearly four months until it was permanently sealed on February 17, 2016. While SoCalGas attempted to plug the leak, residents in nearby neighborhoods experienced health symptoms consistent with exposure to the odorants (mercaptans) added to natural gas and residual components from previous oil production in the field. The incident temporarily displaced more than 5,000 households from their homes, according to the Aliso Canyon Incident Command briefing report issued on February 1, 2016, although some sources place the number of related households at approximately 8,000.[14]

The leak at Aliso Canyon ultimately released approximately 5.7 Bcf of natural gas into the atmosphere, translating to 109,000 metric tons [15] of methane, a potent greenhouse gas, as well as numerous other pollutants.[16] Additional reports identified other potential health effects that lasted even after the well was sealed. A report by the Los Angeles County of Public Health suggests that the continued health symptoms may be due to contaminants in indoor air and dust.[17] As of December 31, 2016, SoCalGas and its parent company, Sempra Energy, recorded estimated costs of $913 million to control the release, monitor air emissions, relocate residents, and cover legal and other expenses.[18] The singular well that failed in the Aliso Canyon accident (SS–25) had originally been drilled in 1953 and was re-purposed for natural gas storage in 1972. The age of this well is not unusual. Per data from the American Gas Association (AGA), approximately 60 percent of active storage wells are located in fields that were activated before 1960.

The Aliso Canyon incident created serious energy-supply challenges for the region and prompted public concerns about the safety of UNGSFs, including the extent and effectiveness of Federal and State oversight. On February 5, 2016, PHMSA issued an advisory bulletin (ABD–2016–02), identifying specific minimum actions that operators of UNGSFs should take, in addition to the recommendations of ADB–97–04,

[10] National Transportation Safety Board, Pipeline Accident Report PAR–93/01 (Nov. 4, 1993).

[11] (Docket PS–137, 59 FR 30567, June 14, 1994).

[12] Interstate Oil and Gas Compact Commission, ''Natural Gas Storage in Salt Caverns: A Guide for State Regulators.'' (IOGCC Guide), 1995.

[13] Allison, M. Lee, 2001, The Hutchinson Gas Explosions: Unraveling a Geologic Mystery, Kansas Bar Association, 26th Annual KBA/KIOGA Oil and Gas Law Conference, v1, p3–1 to 3–29.

[14] For example, see KPCC news report on August 4, 2016, ''Cost estimate of Aliso Canyon gas leak hits $717 million''. *http://www.scpr.org/news/2016/08/04/63268/cost-estimate-of-aliso-canyon-gas-leak-hits-717-mi/.*

[15] CARB estimates that the incident resulted in a total emission of 99,650 ± 9,300 metric tons of methane (CARB, 2016a) and seeks mitigation of 109,000 metric tons.

[16] California Air Resources Board (CARB), 2016; County of Los Angeles Public Health.

[17] Ibid. CARB.

[18] Of the $913 million of costs, approximately 60 percent is for the temporary relocation program (including cleaning costs and certain labor costs). Other estimated costs include amounts for efforts to control the well, stop the Leak, stop or reduce the emissions, and the estimated cost of the root cause analysis being conducted by an independent third party to investigate the cause of the Leak. The remaining portion of the $913 million includes legal costs incurred to defend litigation, the value of lost gas, the costs to mitigate the actual natural gas released, the estimated costs to settle certain actions and other costs. The value of lost gas reflects the replacement cost of volumes purchased through December 2017 and estimates for purchases in 2018. As of mid-January 2018, SoCalGas has replaced all lost gas. SoCalGas adjusts its estimated total liability associated with the Leak as additional information becomes available.'' (SoCalGas/Sempra, 2018).

API RP 1170, API RP 1171, and the IOGCC Guide. The 2016 advisory bulletin recommended that operators begin reviewing their operating, maintenance, and emergency response activities and apply the new RPs accordingly.

On July 14, 2016, PHMSA held a public meeting to discuss potentially extending its regulations to include transportation-related UNGSFs. PHMSA heard from a diverse group of stakeholders, including State regulators, emergency responders, and residents, including those impacted by the Aliso Canyon incident. PHMSA concluded that it should take action to incorporate by reference API RP 1170 and API RP 1171 into part 192. The RPs describe a range of measures that UNGSF operators should undertake to ensure the safe operations of their facilities. The RPs also include construction, maintenance, IM, security, and emergency response procedures.

D. The PIPES Act of 2016

The Aliso Canyon incident prompted broader public concerns as to how to prevent similar UNGSF accidents in the future. Congress addressed these concerns in two sections of the PIPES Act, enacted on June 22, 2016 (Pub. L. 114–183). Section 12 of the PIPES Act required PHMSA to issue minimum safety standards for all UNGSFs within two years of enactment. The statute defines an ''underground natural gas storage facility'' as a ''gas pipeline facility that stores natural gas in an underground facility.'' Because title 49 United States Code (U.S.C.) 60101(a) already defines ''gas pipeline facility'' as ''a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation,'' PHMSA interprets the PIPES Act as directing it to regulate only those UNGSFs that store natural gas incidental to transportation.

The PIPES Act requires that in issuing minimum safety standards for UNGSFs, PHMSA must: (1) Consider consensus standards for the operation, environmental protection, and integrity management of underground natural gas storage facilities; (2) consider the economic impacts of the regulations on individual gas customers; (3) ensure that the regulations do not have a significant economic impact on end users; and (4) consider the recommendations of the Aliso Canyon natural gas leak task force established under section 31 of the PIPES Act of 2016.

The Secretary of Transportation (the Secretary) delegated this responsibility under chapter 601 of title 49 U.S.C. to the PHMSA Administrator (49 CFR 1.97). PHMSA fulfilled this mandate by publishing the IFR on December 19, 2016. The PIPES Act provides that states may adopt additional or more stringent safety standards for intrastate UNGSFs if such standards are compatible with these Federal regulations.

E. Interagency Task Force

In addition to section 12 of the PIPES Act, Congress included a second mandate, section 31, directing the Department of Energy (DOE) to establish an Interagency Task Force on Natural Gas Storage Safety to perform an analysis of the Aliso Canyon events and make recommendations to reduce the occurrence of similar events in the future. PHMSA and DOE co-led the effort. The Task Force established several working groups, comprised of premier scientists, engineers, and technical experts from the Executive Office of the President and various Federal agencies. The working groups examined three key areas:

- The integrity of natural gas wells at storage facilities;
- The public health and environmental effects from natural gas leaks; and
- The nation's vulnerability to reduced energy reliability in the event of future leaks.

In October 2016, the Task Force issued its final report on natural gas storage safety and made 44 recommendations to operators and regulators. The main recommendation to PHMSA was to incorporate existing industry consensus standards, API RP 1170 and 1171, into part 192 of the regulations in an enforceable manner, and consider supplementing the regulations with recordkeeping and reporting requirements as necessary. The Task Force recommended that operators develop comprehensive risk-management plans that addressed risks based on their potential severity and probability of occurrence. These plans should document an operator's risk-management strategy, identify risks, define responsibilities among stakeholders, assess risks, and take appropriate action to reduce risks to well integrity.

The Task Force's report also highlighted growing concerns regarding the age of the nation's natural gas storage infrastructure. For example, wells reflect material, technology, and design factors that may have been appropriate at the time they were constructed, but may not meet design criteria for wells drilled today. Over time, corrosion, other environmental processes, and mechanical stresses from the injection and withdrawal of natural gas can impact well integrity. Wells in depleted oil fields may have been designed for lower operating pressures than what they may be subject to now. Many of these wells were designed without redundant barriers to reduce the risk of gas migration. One of the lessons from the Aliso Canyon incident is that wells without redundant barriers present higher risks because they have a single point of possible failure that may be extremely difficult to shut off or kill.

F. Interim Final Rule

On December 19, 2016, PHMSA issued the IFR that satisfied section 12 of the PIPES Act, exercising the agency's statutory authority to regulate underground natural gas storage facilities. The IFR amended the pipeline safety regulations found at 49 CFR parts 191 and 192, to address critical safety issues related to ''downhole'' UNGSF facilities, including wells, wellbore tubing, casing, and wellheads (81 FR 91860). Additionally, the IFR added a definition of ''underground natural gas storage facility'' to §§ 191.3 and 192.12 and applied reporting requirements to operators of UNGSFs similar to those applicable to operators of other gas pipeline facilities, including annual reports, incident reports, reports of major construction and organizational changes, and registration with the National Operator Registry.

Effective January 18, 2017, all UNGSFs, both intrastate and interstate, now had to meet the minimum standards outlined in RPs 1170 and 1171 and were subject to inspection by PHMSA or a PHMSA-certified State entity. The IFR made each provision in the RPs 1170 and 1171 mandatory unless the operator documented a technical justification why compliance with a provision was not practicable and not necessary for safety. Operators were required to incorporate the RPs into their written operations, maintenance, and emergency response program manuals following § 192.605. PHMSA, or a certified State partner, would review any of the operators' justifications and its procedure manuals during compliance inspections.

After publishing the IFR, PHMSA took significant steps to educate the regulated community on the new requirements, to promote a better understanding of issues concerning integrity assessments of UNGSFs and the implementation of the RPs. The first action was to publish frequently asked

questions (FAQs).[19] The FAQs provided guidance on the procedures, implementation plans, and schedules that operators should have in place to meet the requirements in the applicable RPs. For example, while the IFR did not provide clear timelines for operators to complete the integrity assessments required by the RPs, the FAQs provided a recommended implementation schedule. With the issuance of this final rule, PHMSA will revise the FAQ guidance material to reflect these regulations as amended.

In preparation for the development of inspection and enforcement efforts, PHMSA subject matter experts conducted preliminary site assessments at a cross-section of UNGSFs from May to July of 2017.

Additionally, PHMSA has instituted a program for training Federal and State inspectors on the new minimum Federal standards affecting all UNGSF facilities. As it promulgates this final rule, PHMSA is prepared to modify the program through future regulations and guidance to keep pace with evolving consensus safety standards, academic research, and lessons learned from the firsthand experience of its inspectors, State regulators, affected stakeholders, and the public.

G. Petition for Reconsideration

On January 18, 2017, the American Gas Association (AGA), American Petroleum Institute (API), American Public Gas Association (APGA), and Interstate Natural Gas Association of America (INGAA) (the ''Associations'') jointly filed a petition for reconsideration of the IFR. AGA represents local energy companies, as well as residential, commercial, and industrial natural gas customers. API is a national trade association representing the oil and natural gas industry, including gas pipelines and UNGSF operators. APGA is a national, non-profit association of publicly-owned natural gas distribution systems. INGAA is an industry trade association representing interstate natural gas pipeline companies in the United States.[20]

In the petition, the Associations affirmed their support for PHMSA's efforts to regulate the safety of UNGSFs. They reminded PHMSA that the Associations and their members had supported PHMSA's incorporation by reference of the RPs as Federal standards for natural gas storage. They stressed the importance of adopting the RPs to advance the safety of the pipeline transportation system but asked PHMSA to revise the IFR to incorporate RP 1170 and API RP 1171 without modification and to provide for reasonable implementation periods. The Associations stated that the changes requested in the petition would ensure that PHMSA's regulations would be practical, reasonable, and effective.

On June 20, 2017, PHMSA issued a notice stating that it would provide an answer to the petition in the final rule (82 FR 28224). PHMSA announced that in the interim, it would not issue any enforcement citations for failure to meet any of the non-mandatory provisions of the RPs that the IFR converted to mandatory ones until one year after the issuance the final rule. PHMSA has considered the recommendations from the Associations and is answering their petition in this final rule.

III. Comment Summaries and PHMSA's Responses

A. Introduction

PHMSA received 82 comments and one petition for reconsideration in response to the IFR issued on December 19, 2016. PHMSA provided a 60-day comment period initially but re-opened it on October 19, 2017 (82 FR 48655), for an additional 30 days to provide all interested parties with the opportunity to comment on the IFR and the merits and claims of the petition for reconsideration. During the initial 60-day comment period, PHMSA received 28 comments. PHMSA received 54 additional comments during the re-opened 30-day comment period, but only 14 of those 54 related to this rulemaking.[21] Half of those 14 comments were from organizations that had already submitted comments during the initial, 60-day comment period.

PHMSA discusses and responds to these comments and recommendations in sections B through J, below. For organizational purposes, PHMSA has grouped comments by subject matter. Below is a list of entities who submitted comments on the IFR.

- Atmos Energy
- Consumers Energy
- Dow Chemical Company (Dow)
- ENSTOR
- Environmental Defense Fund (EDF)
- Gas Free Seneca
- Gas Piping Technology Committee (GPTC)
- Geological Maps Foundation
- GPA Midstream Association (GPA)
- Hilcorp Alaska
- Hon. Brad Sherman, representing 30th Congressional District of California
- Independent Petroleum Association of America (IPAA)
- Joint Comment from American Gas Association (AGA), the American Petroleum Institute (API), the American Public Gas Association (APGA), and the Interstate Natural Gas Association of America (INGAA)
- Joint Comment from the States First Initiative, the Interstate Oil and Gas Compact Commission (IOGCC), and Groundwater Protection Council (GWPC)
- Louisiana Mid-Continent Oil and Gas Association (LMOGA)
- Michigan Department of Environmental Quality
- New York State Department of Environmental Conservation
- Northern Natural Gas
- Pacific Gas and Electric Company (PG&E)
- Private Citizens (50)
- Railroad Commission of Texas
- Southern California Gas Company (SoCalGas)
- Texas Pipeline Association
- TransCanada
- Vectren

B. Incorporation by Reference of API Recommended Practices 1170 and 1171

In the IFR, PHMSA required operators to treat non-mandatory language in the RPs as mandatory. For each provision modified by the IFR, an operator could deviate from the recommended practice by providing in its procedures manual a technical justification for each deviation. Under the IFR, PHMSA required an operator to use a subject matter expert to review and document the technical justification, and a member of the operator's executive leadership was required to review, approve, and document the date of approval. During routine inspections, PHMSA would review an operator's justifications for deviating from the modified provisions.

1. Comments on PHMSA's Modification of the RPs

Many commenters disagreed with PHMSA's modification of the non-mandatory provisions of the RPs. Almost all commenters supported the Associations' position concerning the

[19] ''Underground Natural Gas Storage: FAQs.'' (revised April 2017) *https://primis.phmsa.dot.gov/ung/faqs.htm.*

[20] On April 17, 2017, INGAA withdrew from the petition for reconsideration, but the other three Associations have remained as petitioners.

[21] The 40 comments that PHMSA deemed not relevant appear to have been submitted anonymously using automated technology (*i.e.,* bots). While these comments raise generalized issues related to environmental protection (climate change, renewable/alternative energy, streamlining environmental reviews, etc.), the comments do not connect their generalized statements to any of the specific provisions of this rulemaking, such that they would become meaningful to the issue of the safety of underground natural gas storage systems.

conversion of the non-mandatory provisions in RPs 1170 and 1171 to mandatory. Generally, commenters supported the need for consistent minimum safety standards for all UNGSFs and supported regulations to that effect. Those same commenters asserted that if PHMSA adopted the IFR without modification, it would impose burdensome and impracticable requirements on operators.

In their petition, the Associations stated that ''changing the [RPs] in this manner is not necessary for enforcement, nor is it practicable or reasonable.'' The Associations stated their belief that there was ''no regulatory justification for making all 'non-mandatory' provisions 'mandatory,' '' and requested that PHMSA eliminate this provision. Further, the Associations said that although the RPs use both non-mandatory and mandatory language, this alone does not affect their enforceability. They said that the RPs contain enough mandatory provisions to ensure enforceability. The Associations used the mandatory provisions in section 8 to demonstrate that the RPs are broad enough, as written, to be enforced. Additionally, they stated that the non-mandatory statements in the RPs do not compromise the enforceability of the broad requirements imposed on operators through the mandatory provisions.

The Texas RRC stated that it strongly disagreed with PHMSA's modification of the RPs. The Texas RRC noted that the wholesale adoption of RPs would lead to confusion and have unintended consequences. It said that if PHMSA kept the modification to the non-mandatory provisions in the final rule, it would undermine the integrity of the original RPs, ultimately making them even more difficult to enforce. Lastly, the Texas RRC stated that, while the IFR allowed an operator to deviate from particular provisions, PHMSA did not provide a process or timeframe by which the agency would review, approve, or deny the operator's alternative procedure(s). The Texas RRC requested that, if PHMSA chose to incorporate the RPs as modified by the IFR, the agency should add a review process and timeline for consideration of requests for deviation from the modified provisions.

ENSTOR Operating Company, LLC (ENSTOR), asserted that converting all non-mandatory provisions in the RPs to mandatory requirements would undermine the risk-based approach of the RPs and create unintended results. ENSTOR stated that PHMSA's conversion of non-mandatory RP statements in sections 8, 9, 10, and 11 of RP 1171 to mandatory provisions could establish statutorily-impermissible retroactive requirements, such as requiring the use of observation wells drilled around, above, and below a reservoir. ENSTOR added that PHMSA ''can simply require operators to discontinue any deviations that the agency does not agree with,'' and ''there are no standards to guide the agency's determination and no means for review or appeal of a denial of an operator deviation.''

Some operators stated that the process for justifying deviations from a specific non-mandatory RP would be time-intensive, expensive, and unworkable for many operators. LMOGA stated that requiring technical documentation for each deviation was excessive since the RPs themselves already identified the non-mandatory practices as applicable on a case-by-case and site-specific basis. Further, LMOGA noted that the IFR required each deviation must be ''technically reviewed and documented by a subject matter expert to ensure that there will be no adverse impact on the facility. . . .'' LMOGA argued that the term ''subject matter expert'' was vague and imprecise.

EDF said that PHMSA would not be reviewing an operator's technical justifications until after the operator had already deviated from a recommended practice and contended that this could allow harmful activities to persist until an inspection took place at the facility. Further, EDF said that operators might make significant financial commitments in reliance on unapproved deviations, only to see their decisions overturned after the fact, without practical recourse, by PHMSA. Regarding the IFR's treatment of non-mandatory provisions as mandatory, EDF stated its preference would be for PHMSA to adopt the API RPs but examine the non-mandatory provisions of the API RPs on a provision-by-provision basis to determine if any should be made mandatory, and adopt additional regulatory requirements to fill in potential gaps in the final rule.

TransCanada, which participated in the development of RP 1171, stated that the inclusion of both ''should'' and ''shall'' in the RPs reflected a deliberate, iterative, consensus-building effort that resulted in the selection of those specific words. TransCanada went on to say that it would not be prudent to make such recommendations mandatory because doing so could lead to a misplaced effort to document exceptions when operators should be focusing on the imperatives of IM and the development of effective procedures.

2. PHMSA's Response to Comments on Its Modification of the API RPs 1170 and 1171

After considering the petition for reconsideration and public comments, PHMSA is accepting the recommendation to adopt the RPs 1170 and 1171 as originally written by API, without modification. When drafting the IFR, PHMSA needed to provide an immediate and reasonable means by which it could begin regulating UNGSFs, while, at the same time, implementing sections 12 and 31 of the PIPES Act. As discussed earlier, section 12 of the PIPES Act required PHMSA to consider existing industry standards and recommendations from the Interagency Task Force (created by section 31) as the basis for its pending regulations. In its 2016 report, the Interagency Task Force recommended that PHMSA consider ''incorporating existing industry-recommended practices API RP 1170 and 1171 into the part 192 regulations, and they should be adopted in a manner that can be enforced.'' Historically, PHMSA has successfully incorporated by reference many industry standards, guidance, and recommended practices in lieu of developing its own regulations.

After additional review, PHMSA has determined that adopting the RPs as originally published by API would still provide significant benefits for safety, the environment, and public health but would be much easier for the regulated industry and the public to understand and for PHMSA to interpret and enforce. The non-mandatory provisions in the RP provide operators with guidance for optional considerations based on the features and characteristics of individual storage facilities. However, the RPs still require all operators to develop policies and procedures to ensure the functional integrity of UNGSFs and to inspect and verify the operational integrity of these facilities on a site-specific basis and will provide PHMSA with a stronger basis upon which to base enforcement than the IFR.

As the Associations pointed out in their petition for reconsideration, the existence of ''non-mandatory provisions in the RPs does not affect their overall enforceability.'' Throughout the RPs, there are many broad mandatory provisions that operators of UNGSFs must implement, using a range of options considered in accompanying non-mandatory provisions. The non-mandatory provisions provide operators with illustrations, examples, or choices of action for how to achieve compliance with the mandatory provisions. Because these non-mandatory provisions are

closely tied to the mandatory provisions that operators must meet, any non-mandatory provision remains enforceable to the extent that it is necessary, in the context of a particular operator or facility, to ensure compliance with a mandatory provision in the Recommended Practice.

Based on the petition for reconsideration, the post-IFR comments received, as well as its experience with the application and enforcement of similar consensus standards and recommended practices, PHMSA believes that adopting the RPs in their original published form, will accomplish the goal of the IFR, which was to improve safety. The means of achieving this goal was to establish, for the first time, minimum Federal safety standards that would require operators of all UNGSFs to meet certain basic, uniform, and risk-based policies and procedures as outlined in the RPs. In evaluating regulatory alternatives, PHMSA did consider adopting a portion of the ''should'' provisions to identify and address any potential gaps, but PHMSA ultimately decided not to because the Agency does not have sufficient information to identify whether there are ''should'' statements that are, on average, more or less practical and necessary at each site, and thus would be more or less likely to cause operators to seek deviations. In light of this factor and the comments received, PHMSA is convinced that treating the non-mandatory provision as written in the RPs is the better course of action because it adds clarity to the provisions which should help improve compliance while providing at least an equivalent level of safety as the IFR.

The IFR and this final rule are PHMSA's first effort to establish a national regulatory program for UNGSFs. This program includes features such as basic reporting requirements, Federal and State inspections, and a Federal-State partnership that will enable States to go beyond the RPs by adding additional or more stringent requirements. As the agency and the industry gain experience implementing this new regulatory program, they will learn what improvements need to be made. If experience shows that the RPs do not provide an adequate level of safety for certain activities or risks, PHMSA will consider the need to modify the regulations, as appropriate.

C. Compliance Timelines

The IFR required that UNGSFs constructed before July 18, 2017, meet all operations, maintenance, integrity demonstration and verification, monitoring, threat and hazard identification, assessment, remediation, site security, emergency response and preparedness, and recordkeeping provisions of the applicable RPs within one year from the effective date of the IFR, *i.e.,* January 18, 2018. Specifically, existing UNGSFs using a solution-mined salt cavern for storage were required to meet the requirements of RP 1170, sections 9, 10, and 11, and operators of existing UNGSFs using a depleted hydrocarbon reservoir or an aquifer reservoir for gas storage were required to meet the requirements of RP 1171, sections 8, 9, 10, and 11, by the same date.

Following the publication of the IFR on December 19, 2016, PHMSA published FAQ guidance (April 2017) to assist operators in applying the RPs. The FAQs included a suggested timeline for operators to complete the risk analysis and baseline assessments for the requirements in the IFR.

1. Comments on the Compliance Timelines

PHMSA gave operators one year from the effective date of the IFR to comply with the IFR. Commenters stated that the timeline for compliance provided in the IFR was unreasonable, and PHMSA's expectations for operators were unclear. Commenters requested that the final rule adopt phased-in compliance timelines, as PHMSA has done in previous rulemakings. Most commenters recommended that PHMSA follow the timelines published in its Underground Natural Gas Storage FAQs (April 2017).

Most industry commenters asked that PHMSA modify the compliance timelines to break it up into phases and extend the overall schedule, similar to what the FAQs outlined, which suggested that operators complete the baseline integrity assessments of each storage field within three to eight years. These commenters agreed that the FAQ's timelines for baseline integrity assessments were realistic and that any shorter timeframe was unrealistic and impracticable. They supported including clear, phased-in timelines in the final rule. Most said it would take longer than 12 months to implement all aspects of the RPs fully and that the PHMSA should extend the compliance deadline.

The Associations requested that the final rule incorporate the risk assessment and integrity-management timelines currently outlined in the FAQs.[22] The Associations doubted that PHMSA had intended to require operators to implement all actions under the applicable sections of the RPs within one year. In their comment, the Associations spoke of an operator that had recently implemented the RPs at its facility. The operator reported that it took over 18 months to gather the subject matter experts and complete the integrity plans and operating procedures. The Associations added that operators should expedite the implementation of preventive and mitigative measures for high-risk or imminent-risk facilities, as identified by their risk assessments.

Similarly, TransCanada stated that it was impractical to implement the IFR by January 18, 2018, and asked that PHMSA clarify in the final rule what the agency expected operators to have achieved by January 18, 2018, and beyond. TransCanada agreed, with certain reservations, that baseline risk assessments could begin within one to two years of the effective date of the final rule. They also agreed that three to eight years was enough time to complete risk assessments for all individual wells at UNGSFs.

2. Response to Comments on the Compliance Timelines

PHMSA is accepting the commenters' recommendations to reconsider the compliance timelines in the final rule. These timelines are similar to the ones published PHMSA's Underground Natural Gas Storage FAQs (April 2017). Below is a summary of the compliance timelines for implementing a UNGSF program.

Deadline for Written Procedures

Consistent with the IFR, operators must prepare and follow written procedures for the operations, maintenance, and emergency management and response activities outlined by the applicable RPs. However, this final rule removes the requirement in the IFR that these procedures be incorporated into an operator's existing procedural manuals required for gas pipelines under § 192.605. Instead, the final rule replaces this provision with a similar requirement that UNGSF operators develop written procedures for carrying out the final rule and maintain and update them in a similar fashion as required by § 192.605 for gas pipelines. In the final rule, the new requirement is in a new paragraph exclusive to UNGSFs under § 192.12.

Accordingly, operators must establish and follow written procedures for implementing their UNGSF programs. By January 18, 2018, all operators with

[22] ''Underground Natural Gas Storage FAQs,'' issued by PHMSA in April 2017.

facilities constructed on or before July 18, 2017, must have established and put into service procedures for operations, maintenance, and emergency preparedness. All other operators must have these procedures in place prior to commencing operations. Operators must also establish an interval for reviewing and updating these written procedure manuals, not exceeding 15 months, but at least once each calendar year.

Integrity Management Framework

By January 18, 2018, all operators with facilities constructed on or before July 18, 2017, must have established a framework for IM under the IFR. All other operators must have this framework in place prior to commencing operations. An initial framework means a written explanation of the mechanisms or procedures the operator will use to implement each program and API RP to ensure compliance with this final rule. These procedures, implementation framework, and schedules do not need to be fully fleshed out but must be sufficient for putting the program in place over the long term. PHMSA expects that each operator's implementation framework and schedules will evolve into a more detailed, comprehensive, and robust program as the operator's program matures. An operator must make continual improvements to the program.

The IM framework for a UNGSF must include:

- A plan for developing and implementing each program element;
- An outline of the procedures to be developed;
- The roles and responsibilities of UNGSF staff assigned to develop and implement the procedures;
- A plan for how staff will be trained in awareness and application of the procedures;
- Timelines for implementing each program element, including the risk analysis and baseline risk assessments; and
- A plan for how to incorporate information gained from experience into the IM program on a continuous basis.

Timelines for Conducting Risk Assessments

By four years after the effective date of this final rule, each operator must have completed baseline risk assessments for 40 percent of all its wellbores, wellheads, and associated components. Operators should generally prioritize assessments on higher-risk wells first, based on a matrix of identified threats, hazards, and the likelihood of their occurrence. Operators must complete baseline assessments of all reservoirs and caverns by the same date. By seven years after the effective date of this final rule, operators must have completed baseline risk assessments for all remaining wellbores, wellheads, and associated components. This implementation period is similar to the one published in PHMSA's Underground Natural Gas Storage FAQs (revised April 2017).[23]

D. Placement of Underground Storage Regulations in a New Part for Title 49 of the 49 CFR

The IFR added requirements in parts 191 and 192 for UNGSFs that cover reporting, recordkeeping, design, construction, and operation and maintenance procedures and practices. Before the IFR, there were no Federal regulations pertaining directly to UNGSFs. While part 192 already covered much of the surface piping at these facilities, up to the wing-valve assemblies on the wellhead at UNGSFs served by pipeline, PHMSA had not previously issued rules for the actual wellhead or ''downhole'' portion of these facilities.

1. Comments Requesting a New Part for Title 49 of the CFR

The IFR amended parts 191 and 192 to add underground natural gas storage regulations. For several reasons, commenters requested that PHMSA create a new ''part 19x'' in subchapter D of title 49 of the CFR that would contain regulations exclusively for underground storage. Generally, their interest was in differentiating the requirements for UNGSF from those requirements for other types of regulated gas facilities.

The Associations and some operators recommended that PHMSA remove the underground storage regulations from part 192 and place them in a new part under subchapter D in 49 CFR. They asserted that moving UNGSF regulation to a new part in the pipeline safety regulations would clarify the application of the regulations both now and in future rulemakings. The commenters stated that because the existing definitions of pipeline and pipeline facility in § 192.3 were so similar to the definition of underground natural gas storage facility (also in § 192.3) that it was unclear how to apply the regulations.

The Associations also expressed concern that because the IFR placed the underground storage regulations in part 192, operators might mistakenly apply the engineering regulations specific to other pipeline facilities to UNGSFs—or vice-versa. The RPs contain design, construction, and IM practices for UNGSFs that the Associations believed are considerably different from the practices for other pipeline facilities outlined throughout part 192. They provided examples of regulations that, if misapplied, might result in unsafe practices. The Associations asserted that PHMSA could avoid these potential conflicts by placing the UNGSF regulations in a new part under 49 CFR subchapter D, separate from part 192.

Several commenters, including Dow Chemical Company, claimed that adding underground storage regulations to part 192 would generate confusion. Specifically, commenters said that the IFR was unclear as to which sections of part 192 applied to UNGSFs and which ones to other gas pipeline facilities. The GPTC expressed the view that the definition of underground natural gas storage facilities in § 192.3 overlapped with the existing definitions of pipeline facilities and transmission pipelines and that it believed PHMSA intended to expand the regulatory scope of parts 191 and 192 to UNGSFs. However, GPTC implied that the overlap between the new definitions and the new regulations' placement in part 192 would create confusion as to the applicability of the RPs to pipeline facilities already regulated under other subparts of part 192.

Similarly, PG&E requested that the final rule revise the pipeline safety regulations to specify which parts of 49 CFR subchapter D applied to underground natural gas storage, instead of providing clarification through agency guidance materials (*e.g.,* FAQs). They stated that PHMSA historically had not incorporated FAQs addressing additional programs, such as ''Integrity Management,'' ''Drug and Alcohol Testing,'' and ''Gathering Lines,'' into regulatory language. PG&E stated that it believed this practice would leave operators at risk of being forced to comply with requirements that did not appear in regulatory language. Therefore, PG&E encouraged PHMSA to clarify § 192.12 by adding an exclusion for the subparts of part 192 that would not apply to underground natural gas storage. Other commenters shared this view and expressed concern that PHMSA would attempt to use FAQs or similar guidance documents instead of properly promulgated regulations.

2. Response to Commenters' Request for a New Part

Section 60101(a)(21) defines the term ''transporting gas'' as ''the gathering, transmission, or distribution of gas by

[23] *https://primis.phmsa.dot.gov/ung/faqs.htm.*

pipeline, or the storage of gas, in interstate or foreign commerce.'' The statute specifically lists the ''storage'' of natural gas as one component of ''transporting gas.'' Since all PHMSA's substantive regulations pertaining to the transportation of natural gas are in part 192, PHMSA believes the UNGSF regulations also belong in part 192.

Along with the public comments, PHMSA reviewed recommendations from the Interagency Task Force and a petition for rulemaking from INGAA. The Task Force recommended that PHMSA incorporate the RPs into part 192, with supplemental recordkeeping and reporting procedures as necessary. The IFR noted that INGAA had petitioned PHMSA on January 20, 2016—while the Aliso Canyon accident was still ongoing—to incorporate the RPs into part 192. Because UNGSFs are part of the broader natural gas transportation systems, part 192 is the most logical place for the new substantive regulations. Incorporating the requirements into parts 191 and 192 also subjects UNGSF operators to the requirements of part 190, for enforcement and regulatory procedures, and part 199, for drug and alcohol testing. Therefore, PHMSA had adopted these recommendations and by adding the UNGSF regulations in parts 191 and 192.

PHMSA agrees that the language in the IFR resulted in a certain level of ambiguity about the applicability of § 192.12 to other gas pipeline facilities and, vice versa, the applicability of other existing regulations to UNGSFs. PHMSA has addressed this issue by making two changes in this final rule. First, PHMSA is adding an introduction to § 192.12, which provides that the section contains minimum requirements for UNGSFs. This introduction means to clarify that § 192.12 only applies to UNGSFs and no other pipeline facilities. Second, the final rule also modifies the definition of a UNGSF to eliminate any potential overlap with other gas pipeline facilities covered elsewhere in part 192.

PHMSA also agrees with the commenters that the FAQs are guidance documents to help operators understand and implement rulemakings. FAQs are not the basis for PHMSA's enforcement of the rule. However, they can and should be used to clarify or explain PHMSA's interpretation of the scope and applicability of the regulation. For example, while not explicitly stated in the preamble or the amendatory language of the IFR, PHMSA explained through FAQs that operators of UNGSFs are subject to regulation under 49 CFR part 199, ''Drug and Alcohol Testing.'' Any operator of a ''pipeline facility'' that is subject to any subset of the part 192 regulations is required to test covered employees for the presence of prohibited drugs and alcohol. PHMSA also explained in the FAQs that operators of UNGSFs were not required to comply with the ''Qualification of Pipeline Personnel'' requirements contained in subpart N of 49 CFR part 192. The FAQs explained that operators must comply with the training requirements in API RP 1170 (section 9.7.5) or API RP 1171 (section 11.12), dependent upon the type of storage field. Both API RP sections describe general training parameters and specifically identify the need to train personnel for normal, abnormal, and emergency conditions. Additionally, this final rule makes it clear that UNGSFs are not subject to any requirements of part 192, aside from § 192.12.

E. Suitability of API RPs 1170 and 1171 as the Basis for Rulemaking

In the IFR, PHMSA incorporated by reference two industry Recommended Practices, API RPs 1170 and 1171, into 49 CFR part 192.

1. Comments Concerning the Suitability of the RPs for Rulemaking

PHMSA used RPs 1170 and 1171 as the foundation for the new minimum safety standards for UNGSFs. Commenters cited the forewords of both RPs, which state that the RPs were not intended to substitute for Federal or State regulations as the basis for objecting to their use as the basis for new regulatory requirements. Other commenters identified potential gaps in regulatory coverage in the RPs, such as risk management practices for solution-mined salt caverns. For these reasons, commenters stated that the RPs were not an adequate basis for regulation.

Some commenters were concerned with the suitability of the RPs as the basis for regulations. Texas RRC and EDF criticized PHMSA's approach to incorporating the RPs into the underground natural gas storage regulations. The Texas RRC stated that the RPs were neither drafted nor intended to operate with the force and effect of Federal regulations and, as such, should not be adopted as written. Similarly, EDF pointed to the scope section of RP 1170, which states that the document is ''intended to supplement, but not replace, applicable local, State, and Federal regulations.'' Both the Texas RRC and EDF said they understood the engineering merit behind the RP, but expressed a belief that the RPs were more suitable as guidance material for operators.

Most private citizens urged PHMSA to go beyond the safety provisions in the RPs. Notably, these commenters expressed concern over the lack of a specific ''risk management'' section in RP 1170 for solution-mined salt caverns. They asked that the final rule provide additional risk management practices for solution-mined salt caverns.

A few commenters were concerned that the provisions in the RPs were vague, ambiguous, and insufficient in detail. For instance, States First said that while the RPs contain substantial information and guidance for operators, ''it is [States First's] belief that [the RPs] require considerable wording revisions and additions to make them effective as regulations.'' Similarly, MDEQ stated that the IFR lacked clear timeframes and provided little regulatory oversight and approvals for certain actions taken. MDEQ expressed concern that in many instances, the IFR left it up to operators to determine the risks facing their facilities and the methods for addressing them. It went on to say that IFR created inconsistencies and uncertainties in providing the level of protection needed. These inconsistencies and uncertainties in the IFR, in turn, could make it difficult for State regulators to address safety issues for intrastate gas storage operations by implementing additional regulations beyond the IFR.

2. Response to Comments Concerning the Suitability of the RPs for Rulemaking

PHMSA disagrees with the commenters' broad assertion that the API Recommended Practices are an inadequate basis for regulations. PHMSA routinely participates in consensus-standards-setting organizations that address pipeline design, construction, maintenance, inspection, and repair. These standards represent the best practices of the industry and, therefore, should be considered in the development of potential regulation. Agency participation in the development of these voluntary consensus standards is vital to eliminate the necessity for development or maintenance of separate, government-unique standards.

Further, the PIPES Act specifically directs the Secretary to consider ''consensus standards for the operation, environmental protection, and integrity management of underground natural gas storage facilities'' and ''the recommendations of the Aliso Canyon natural gas leak task force established under section 31 of the PIPES Act of 2016'' (49 U.S.C. 60141(b)). As

discussed above, the Interagency Task Force issued a final report, titled ''Ensuring Safe and Reliable Underground Natural Gas Storage,'' making several recommendations. With respect to API RP 1170 and API RP 1171, the report recommended that ''[t]he incorporation of API RP 1170 and 1171 into the part 192 regulations will be an important step in improving the safety and reliability of underground gas storage facilities.'' [24] As a result, the report recommended that PHMSA consider incorporating the standards into part 192 in a manner that would make the standards enforceable.[25] After consideration of the RPs and the comments received concerning their incorporation, PHMSA concludes that the standards are sufficient to establish an initial, baseline level of regulation with the additions incorporated into this final rule. This initial regulatory framework will undoubtedly evolve and improve over time as PHMSA gains greater experience in this industry.

F. Integrity Management Practices

Integrity management is PHMSA's risk management program for identifying, assessing, and addressing potential threats that can have adverse consequences and a finite probability of occurring. The regulations in 49 CFR parts 192 (for gas pipelines) and 195 (for hazardous liquid pipelines) are a type of integrity management that PHMSA has applied to traditional pipeline systems. In place for over ten years, PHMSA's integrity management regulations had aided in the removal of thousands of defects from pipeline facilities before they failed and in the identification of preventive and mitigative measures to reduce the likelihood and consequences of failures potentially affecting high consequence areas. PHMSA expects that applying similar integrity and risk management practices to UNGSFs will have a similar effect on improving safety.

As discussed throughout this final rule, API RP 1170 and API RP 1171 outline the concepts of risk-based integrity management and provide instructions for the risk assessment and analysis process for UNGSFs. The IFR required operators of depleted hydrocarbon reservoirs and aquifer reservoirs to meet the risk-management requirements outlined in section 8 of RP 1171, which resembled PHMSA's existing IM program for gas and hazardous liquid pipelines. This section outlines the components of a process, including data collection, threat and hazard analysis, risk assessment methodology, preventative and mitigative measures, risk monitoring, and recordkeeping procedures.

The IFR did not contain a similar provision for operators of solution-mined salt cavern UNGSFs. The term ''Integrity Management'' is a systematic approach to analyzing and mitigating risk to promote the safe management and operations at a given facility. The IFR required operators of solution-mined salt caverns to meet the requirements of RP 1170, section 10, ''Cavern Integrity Monitoring,'' which directs operators to develop a holistic approach to maintaining well integrity but does not outline the components of an integrity-management process as explicitly as section 8 of RP 1171.

1. Comments Concerning Integrity Management Practices

As written, the risk-management practices in API RP 1170 (for solution-mined salt caverns) lack the specificity of the risk-management practices in section 8 of API RP 1171 (for depleted hydrocarbon reservoirs and aquifer reservoirs). Commenters identified the lack of robust risk management practices as a safety gap in the integrity program for solution-mined salt caverns and requested that the final rule supplement what is currently prescribed in API RP 1170.

Several commenters expressed concern that the RPs and, consequently, the IFR, lacked specific risk management criteria for solution-mined salt caverns. As Gas Free Seneca stated, RPs 1170 and 1171 mirror each other in every respect except for risk management. Gas Free Seneca, EDF, and some private citizens requested that the final rule add risk management standards for solution-mined salt caverns like the standards that exist for depleted hydrocarbon and aquifer reservoirs contained in section 8 of RP 1171.

EDF stated that the IFR called for depleted hydrocarbon and aquifer reservoir operators to develop risk management plans that address risks and provide plans to mitigate those risks. In its comments, EDF suggested that such a plan would be a good supplement to the regulations for solution-mined salt caverns. It stated that adding a risk management plan as a requirement in the final rule would be consistent with the natural gas storage rules being considered by California regulators following the incident at Aliso Canyon.

Gas Free Seneca, States First, EDF, and some private citizens requested that PHMSA mandate risk-acceptance criteria for underground natural gas storage facilities. Gas Free Seneca and private citizens asked that PHMSA set a measurable limit for risk and specify the types, frequency, and methods operators must use to collect and conduct risk analyses. States First asked that PHMSA set an acceptable level of risk so that operators would be required to meet an established standard, irrespective of their self-defined ''capabilities.'' EDF added that the final rule would benefit from the use of a risk-management ''heuristic'' such as ''ALARP,'' an acronym that stands for ''As Low as Reasonably Practicable.'' According to EDF, ALARP provides a process by which the regulated industry and the regulator can work together ''to systematically set appropriate levels of risk reduction.'' [26]

2. Response to Comments Concerning Integrity Management Practices

Based on the commenters' suggestions, and supported by an Interagency Task Force recommendation, PHMSA is making several enhancements to the integrity management provisions of the final rule. First, PHMSA is extending the risk management provisions of section 8, to salt-cavern UNGSFs, to the extent they apply to the physical characteristics and operations of solution-mined salt caverns, within one year of the effective date of the final rule. In other words, the final rule requires that UNGSFs using solution-mined salt caverns generally conform to the risk management practices that apply to UNGSFs using depleted hydrocarbon and aquifer reservoirs.

There are several reasons for this change. As discussed earlier, risk management is a standard concept in the oil and gas industry, although different programs may use slightly different terminology. Additionally, the Interagency Task Force recommended that PHMSA incorporate risk management practices into its regulations. During its initial site assessments, PHMSA observed that operators of solution-mined salt caverns were already in the process of conforming to risk management practices like those detailed in section 8. RP 1170 does address certain aspects of risk management practices but is less

[24] ''Ensuring Safe and Reliable Underground Natural Gas Storage,'' Final Report of the Interagency Task force on Natural Gas Storage Safety; October 2016. See pg. 63–64 of the final report at *https://www.energy.gov/downloads/report-ensuring-safe-and-reliable-underground-natural-gas-storage.*

[25] Ibid.

[26] ALARP is a principle more common in European law that sets an acceptable level of risk *as low as reasonably practicable.*

comprehensive than RP 1171. For instance, section 10.2 of RP 1170 requires operators to ''take a holistic and comprehensive approach to monitor cavern integrity,'' which would include the identification and assessment of risks. Section 10.2 of RP 1170 goes on to say there is no single best method to achieve thorough cavern-integrity monitoring, thus leaving it up to an operator to evaluate the risks of each specific facility.

While the scope of RP 1171 is specific to depleted-hydrocarbon and aquifer reservoirs, much of section 8 is general enough that operators can readily apply the practices across all types of UNGSFs. PHMSA believes requiring the risk-management practices outlined in section 8 to all UNGSFs is the most practical method of directing all operators to manage the risks of gas storage releases on a case-by-case, facility-specific basis. This approach gives operators the flexibility to determine what actions are appropriate.

Second, § 192.12(d) uses slightly different terminology than what was used in the IFR to describe the risk management provisions that operators must follow. Whereas subsection 8.1 is titled ''Risk Management for Gas Storage Operations,'' § 192.12(d) is titled ''Integrity management program.'' This change is intended to confirm that the risk management program under the final rule has been broadened beyond what is provided solely under the RPs and that it is a variation of the IM programs established under parts 192 and 195 for gas transmission pipelines, interstate liquid pipelines, and gas distribution systems. The industry generally uses the term IM to describe the risk-management provisions of section 8, so it should be less confusing and more consistent to use the term IM to refer to all four integrity-management programs applicable to PHMSA-regulated pipeline facilities,[27] even though the details of each program vary slightly.

Third, as noted in the FAQs, this initial IM framework for depleted hydrocarbon and depleted aquifer reservoir UNGSFs that were constructed prior to July 18, 2017, and were subject to section 8 under the IFR, had to be in place by January 18, 2018. These operators must now implement a full IM program that includes the new provisions in the final rule within one year from the final rule's effective date.

Fourth, this final rule requires a slightly different process for UNGSF operators to develop a robust IM program, depending upon whether the facility is a depleted hydrocarbon or a depleted aquifer reservoir or whether it is a solution-mined salt cavern. For the former, the first step is to put together an initial ''framework'' based on the provisions of section 8, including:

- A general discussion or definition of risk management;
- Data collection and integration;
- Threat and hazard identification and analysis;
- Risk assessment;
- Preventive and mitigative measures;
- Periodic review and reassessment; and
- Recordkeeping.

For existing solution-mined salt cavern UNGSFs, they must implement a full IM program within one year from the effective date of the final rule. For new facilities constructed after the effective date of the final rule, they must have a full IM program in place before they commence operations. In addition, the final rule allows solution-mined salt cavern UNGSFs greater flexibility in meeting the provisions of section 8 by requiring that they meet only those provisions of section 8 that are applicable to the physical characteristics and operations of a solution-mined salt cavern. The two timelines differ because operators of solution-mined salt cavern facilities did not receive notice of having to meet the IM provisions of section 8 ''that are applicable to the physical characteristics and operations of a solution-mined salt cavern UNGSF.'' PHMSA believes that such a limitation on the IM program for solution-mined salt caverns is reasonable and readily ascertainable by operators of such facilities.

Fifth, in addition to the general framework outlined in section 8, the final rule includes several specific IM requirements for all UNGSF operators. Each operator's plan must include the following:

- A plan for developing and implementing each program element to meet the requirements of the final rule;
- The roles and responsibilities of UNGSF staff tasked with developing and implementing the IM program;
- An outline of the IM procedures to be developed;
- A plan for how staff will be trained in awareness and application of the operator's IM program;
- Timelines for implementing each IM program element, including the risk analysis and baseline risk assessments; and
- A plan for how to incorporate information gained from experience into the IM program on a continuous basis.

Because these are new, more specific requirements than those contained in the IFR, operators of existing UNGSFs will have an additional year to comply.

Sixth, PHMSA establishes a schedule for conducting the initial or ''baseline'' assessments for each reservoir or cavern and all wells. PHMSA has based this schedule on commenters' recommendations to use a ''phase-in'' timeline, similar to the UNGSF FAQs published in April 2017. The final rule requires that operators complete all baseline assessments for reservoirs and salt caverns and 40 percent of the baseline assessments for individual wells within four years from the effective date of this final rule. Operators must start with the higher-risk wells, as identified through the operator's risk-analysis process. The remaining 60 percent must be completed within seven years from the effective date of this final rule.

Seventh, the final rule requires that operators conduct periodic reassessments under API RP 1171, subsection 8.7, on a risk-based schedule. This final rule establishes that reassessment intervals must be no more than seven years. PHMSA assumed that the stress conditions for the downhole piping used at the well site are similar to the stress conditions for buried pipe. Because of this, PHMSA chose a seven-year reassessment (maximum) interval to be consistent with other gas pipeline regulations. However, an operator could determine its reassessment interval should be less than seven years based on its risk-based assessments.

Seventh, the final rule makes clear that operators may use one or more risk assessments completed before the effective date of the rule to establish a baseline assessment, so long as they meet the requirements of section 8 of RP 1171, and continue to be relevant and valid for the current operating conditions and environment. These requirements are consistent with the FAQs published in April 2017.[28] This requirement is intended to prevent operators from reproducing assessments that already meet the requirements of this final rule. The criteria and timing for reassessments should be determined using results from baseline assessments and updated risk analyses in accordance with section 8. Operators may also conduct new or additional assessments to supplement prior assessments as

[27] The integrity management provisions for gas transmission pipelines are found at §§ 192.901 through 192.951, for gas distribution pipelines at §§ 192.1001 through 192.1015, for hazardous liquid pipelines at § 195.452, and for UNGSFs at § 192.12, as amended by this final rule.

[28] *https://www.phmsa.dot.gov/pipeline/underground-natural-gas-storage/ungs-frequently-asked-questions.*

necessary to establish a thorough understanding of a facility's risks.

Eighth, the final rule requires that operators maintain IM records in the same manner as pipeline operators are required to keep records under other IM provisions in parts 192 and 195. Maintaining IM records is critical if operators are to properly understand their systems, track and learn from experience, and to make continuous improvements. These records document how and why decisions are made to identify risks, set priorities among risks, conduct assessments, and identify and carry out preventive and mitigative measures. Further, operators must maintain IM records for the life of the UNGSF to demonstrate compliance with all the requirements under § 192.12(d). This level of documentation includes any calculation, amendment, modification, justification, deviation and determination made, and any action that is taken to implement and evaluate any element of an IM program. This level of documentation is the same standard found in § 192.947 for gas transmission systems and § 195.452(l) for hazardous liquid transmission systems.

Regarding the commenter's suggestion that PHMSA should apply a ''risk-tolerance'' model such as ALARP, PHMSA believes such a change is unnecessary. Integrity Management (IM) is one of many different varieties of risk management models used by different industries and organizations to handle safety risks to people and the environment. PHMSA's IM regulations require pipeline operators to identify the unique risks specific to their facilities comprehensively and to address those risks through a continuous program of gathering and analyzing data and learning from experience. PHMSA's approach places the onus on operators to identify, prioritize, and handle the risks posed by pipeline accidents. The IM requirements in this final rule are designed to be interpreted and applied essentially the same as the IM regulations currently applied to gas and hazardous liquid pipelines.

PHMSA believes that the integrity program outlined in § 192.12(d) and the RPs provides a flexible model that accounts for the diversity and variability of all UNGSFs, so long as the practices are risk-based and rigorously applied. To introduce a new model, such as ALARP, just for underground gas storage facilities and not other pipeline facilities, could be confusing for operators, PHMSA inspectors, and the public. Further, PHMSA is not aware of evidence that the ALARP model would provide an increase in safety.

G. Notification Criteria Under 49 CFR Part 191 for Changes at a Facility

The IFR added reporting requirements in 49 CFR part 191. PHMSA requires four types of reports from operators of UNGSFs: (1) Annual reports, (2) incident reports, (3) safety-related condition reports, and (4) National Registry information. PHMSA required this information because there was no that UNGSF operators follow the same provisions that gas pipeline operators must follow for providing PHMSA with notification of changes at their facilities.

Regarding the last type of report, PHMSA required National Registry information to identify the facility operator responsible for operators through an Operator Identification Number (OPID). The IFR required operators to notify PHMSA no later than 60 days before certain changes occur, including:

- Construction of a new UNGSF facility;
- Abandonment, drilling, or ''workover'' of an injection, withdrawal, monitoring or observation well. Concerning well workovers, the IFR stated that such work included the replacement of a wellhead, tubing or casing; and
- Changes in the entity (including company, municipality, etc.) that is responsible for an existing UNGSF and the acquisition or divestiture of an existing facility.

PHMSA clarified the IFR's notification requirements through April 2017 FAQs. For example, an operator should notify PHMSA of a ''replacement of a wellhead, tubing or casing.'' The FAQs said a ''replacement'' in this context meant the ''complete removal of the existing component and replacement with a new component (including replacement of wellhead, tubing, or casing).'' The FAQs further explained that there was no need for an operator to notify PHMSA of routine maintenance or repairs to existing components. The FAQs went on to say that operators should submit separate notifications for each storage field, but could bundle multiple activities within the same storage field in a single notification.

1. Comments on Notification Criteria Under 49 CFR Part 191 for Changes at a Facility

The IFR required UNGSF operators to notify PHMSA no later than 60 days before certain changes took place at their facilities took place, including changes in the operator of a facility and major new construction, as is currently required for other pipeline facilities. Operators found this reporting requirement excessive and recommended a monetary or activity threshold to reduce the volume of notifications. These commenters believed that the IFR's 60-day notification (reporting) requirement for new construction and construction-related activities was ambiguous and would result in excessive notifications. Some commenters expressed concern that the provision failed to exempt emergencies where advance reporting would be impractical.

LMOGA and TransCanada contended that PHMSA's notification requirement would duplicate their reporting burdens and cause delays because operators already had to notify states of construction activities and permitting. LMOGA expressed concern that a 60-day-notice to PHMSA for certain construction activities, such as well workovers, could shut down wells for an unnecessary amount of time. It stated that, currently, work permits for well workovers are issued by states in one to three days. TransCanada contended that PHMSA should remove the 60-day-notice requirement for new construction from the final rule altogether. It suggested that PHMSA could capture this same information through the annual report and safety-related condition reports instead of creating a separate notification requirement.

GPTC, PG&E, and others suggested other ways to streamline or reduce the notification burden involving new construction. For example, GPTC suggested that the final rule limit advance notifications to only those well workovers where a well was killed, a plug placed in the well for work, or a rig installed.

Another suggestion from PG&E was for PHMSA to adopt a monetary threshold for new-construction notifications, provide an exemption for emergency work, and define what activities would constitute a ''well workover.'' Regarding the monetary threshold, PG&E recommended that PHMSA only require operators to report well-workover and new-construction activities that cost more than $2 million. The company noted that PHMSA currently limits pipeline notifications [29] to those projects involving a certain minimum mileage or monetary threshold; it argued that applying similar thresholds for UNGSFs could reduce the reporting burden on operators.

[29] 49 CFR 191.22(c)(1)(i).

2. Response to Comments on Notification Criteria Under 49 CFR Part 191 for Changes at a Facility

The purpose of the 60-day notification requirement in the IFR is to alert PHMSA of upcoming critical well work that requires an operator to control well pressure. One example of such a well-control activity is well abandonment. If an operator incorrectly performs an abandonment, then brine fluid or natural gas may migrate through the wellbore and escape into drinking-water aquifers or to the surface. If notified in advance, PHMSA will have the opportunity to review the operator's pre-work plan and observe the in-progress work. Ultimately, this process is beneficial for the operator and public safety because it ensures a comprehensive assessment of the operators' methods. Such notifications could prevent an incident or more costly remediation work. PHMSA will have the opportunity to review an operator's records of the project but, because most of the work is underground, reviewing the work in real-time is ideal.

PHMSA agrees with the commenters that it should narrow the scope of the notifications for changes to a facility that would eliminate excessive reporting of minor or routine maintenance. Accordingly, this final rule limits required notifications to PHMSA to only those involving new construction and major maintenance work. Specifically, the final rule provides that operators must notify PHMSA of (1) any new facility construction; (2) maintenance work that requires a workover rig and costs $200,000 or more for labor, materials, and services; and (3) any plugging or abandonment activities, regardless of cost.

The scope of this modified notification requirement is limited to only those types of activities that require adherence to specific methods and techniques to prevent damage to the formations and to safely control pressure in the well. Bringing in a workover rig marks a step-change in the degree of complexity and scope of work. The presence of a workover rig means the operator is opening the well, rather than just doing some wing valve work at the surface. Opening a well (requiring a workover rig) usually infers serious maintenance or repair work, performing extensive logging and integrity evaluations, or replacement of downhole components.

Concerning the $200,000 maintenance-work threshold, PHMSA has not indexed this exact dollar amount across all states and activity types. During preliminary inspections, PHMSA observed what high-risk activities were occurring in the field and generally how much it costs operators to complete those maintenance activities. PHMSA is aware that the costs of pressure-control and remediation activities vary considerably, depending upon the depth of the well, pressure, casing type and size, and other factors. However, PHMSA believes this is an appropriate threshold level that captures the higher-risk activities and still reduces the volume and burden of notifications. There is the possibility that a workover rig is needed for some minor issues, where the cost falls below the 200k threshold. Again, most major activities with a workover rig will cost more than $200,000, thus triggering this type of notification. Note that PHMSA also allows operators to report multiple well activities within the same storage field in a single notification.

PHMSA also recognizes that the IFR inadvertently omitted an exception for emergency maintenance or repairs. If an operator reasonably determines that it needs to do work immediately, for safety reasons, then it should not delay the work because of the 60-day notification requirement. Accordingly, the final rule adds a provision that allows operators to notify PHMSA as soon as practicable in instances where 60-day notice is not feasible due to an emergency. In such cases, an operator must promptly respond to the emergency, notify PHMSA as soon as practicable, and document the emergency and the reason for any delay in notification.

H. The States' Role in Regulating UNGSFs

There are approximately 403 active underground natural gas storage facilities (UNGSFs) in the United States, with about a 60/40 split between interstate and intrastate facilities. Interstate UNGSFs serve interstate facilities, and PHMSA has exclusive pipeline safety jurisdiction over the design, construction, operation, and maintenance of these facilities. Intrastate UNGSFs, on the other hand, are facilities that provide gas storage for intrastate pipelines, most notably local gas distribution companies (LDCs). Generally, these intrastate gas pipeline facilities have been subject to State regulation by its public utility commission or oil and gas commission. Intrastate UNGSFs continue to be subject to State regulation, but only if the applicable State authority has filed a certification with PHMSA to participate as a full State partner under the new Federal program and receive Federal funding through PHMSA.

The Federal regulatory program for UNGSFs has been set up to mirror the existing Federal-State pipeline regulatory partnership for gas and hazardous liquid pipelines as established by the Natural Gas Pipeline Safety Act in 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, respectively. Under this system, Congress has conferred on the Department primary jurisdiction over all natural gas and hazardous liquid (primarily oil) pipelines in or affecting interstate commerce but has preserved the states' role in regulating intrastate pipelines, as long as the State that chooses to submit an annual certification to PHMSA and agrees to enforce the minimum Federal standards in addition to any State regulations compatible with the Federal standards.

The PIPES Act directed PHMSA to expand its pipeline-safety regulatory program to include the storage of natural gas incidental to transportation, using this same Federal-State model. Just as various states had previously regulated intrastate natural gas pipelines before the passage of the Natural Gas Pipeline Safety Act of 1968, so too have many states regulated UNGSFs prior to the passage of the PIPES Act and issuance of the IFR. These states will be able to continue this important safety role as partners with PHMSA.

Under the IFR and this final rule, intrastate UNGSF facilities will be regulated in one of two ways. Depending upon State law, they will be regulated either by a certified State entity (*e.g.,* public utility commission or oil and gas commission), or, in the absence of a certified State partner, by PHMSA. Notably, section 12 of the PIPES Act expressly allows a State authority to adopt additional or more stringent safety standards for intrastate UNGSFs, provided such standards are compatible with the minimum Federal requirements. PHMSA interprets this to mean that any State authority that has filed an annual State certification with PHMSA under 49 U.S.C. 60105 to regulate UNGSFs may regulate and enforce its own additional or more stringent regulations against intrastate UNGSFs that fall under that authority's State jurisdiction, to the extent that the additional State standards are compatible with the Federal safety regulations. This arrangement is the same as the States' authority to regulate all other intrastate pipeline facilities under parts 192 and 195.

Accordingly, States that had UNGSF regulations before the adoption of the IFR may continue to implement any

additional or more stringent regulations that they currently enforce with respect to intrastate facilities, to the extent that such regulations are compatible with the minimum standards set by this final rule. For a State wanting to expand its authority to inspect interstate facilities under the final rule, it will be able to apply to PHMSA for discretionary interstate agent status under 49 U.S.C. 60106(b), just as a State authority today, may carry out such a role for other oil and gas pipeline facilities.

It is worth noting that neither the PIPES Act nor this final rule alters the existing role of the States in the siting or permitting of UNGSFs or their regulation of natural gas production. PHMSA has never exercised regulatory control over these issues for pipeline and will not be doing so under the final rule. Instead, the PIPES Act provides that all UNGSFs incidental to gas ''transportation'' are now subject to Federal minimum safety standards promulgated by PHMSA. Section 12 of the PIPES Act directs PHMSA to exercise this authority in conjunction with its State partners in the same manner as other pipeline facilities are regulated.

This means FERC and the States will continue to exercise their respective authorities over the permitting of UNGSFs. FERC reviews applications for the construction and operation of UNGSFs owned by interstate gas pipeline operators and that are integrated into their pipeline systems. In its application review, FERC requires an applicant to certify that it will comply with DOT safety standards. While FERC has no jurisdiction over pipeline safety, PHMSA and FERC actively collaborate to exercise their respective responsibilities.[30]

PHMSA received several comments regarding the effect of the IFR on the role of the states in UNGSF regulation. These comments dealt primarily with concerns expressed by State regulators and gas-storage operators over PHMSA's role and the nature of the Federal-State partnership under this new regulatory scheme. These commenters also asked PHMSA to explain the roles of the various parties in permitting UNGSFs, to discuss the potential conflicts that may arise between existing State regulations affecting underground storage and the new Federal minimum safety standards and the degree to which certain existing State regulations will continue to apply to interstate UNGSFs. Of particular concern was whether the IFR could serve to undermine or reduce the existing level of safety and environmental protection that several States have been applying to interstate UNGSFs, especially where certain State standards could arguably be viewed as broader or more stringent than the RPs being adopted in the final rule. These comments are discussed below in more detail.

1. Comments on State Permitting of UNGSFs

In its comments, the Texas RRC asked PHMSA to clarify the States' role in permitting UNGSFs and commented that the IFR provided no specific details regarding permitting areas that fall to the states.[31] The commission noted that while the IFR accurately stated that permitting of gas wells is not a PHMSA function, PHMSA had incorrectly concluded: ''that the traditional role of permitting intrastate facilities falls to the states and the permitting of interstate facilities falls to the Federal Energy Regulatory Commission (FERC).'' According to the Texas RRC, ''FERC is not set up to conduct permitting of individual wells, ensuring proper notification is provided to all entitled parties, reviewing and adequately protecting groundwater, and protecting correlative rights.'' Conversely, the Texas RRC explained that under Texas law, the Texas RRC is directed to regulate the downhole portion of UNGSFs to fulfill its mandate to conserve State natural resources and to protect the environment. Therefore, it argued, ''all of these functions must fall to the State regardless of whether a well is part of an intrastate or interstate facility.'' Finally, the Texas RRC argued that the failure of PHMSA to properly address these scenarios ''indicates a lack of a clear understanding of underground natural gas storage and the historical role many states have had in its successful regulation of underground hydrocarbon storage.''

Similarly, Dow Chemical asserted that many states had established successful regulations and standards for permitting, operations, maintenance, monitoring, and other issues related to UNGSFs. The company pointed out that states with underground-storage safety regulations typically regulate both intrastate and interstate facilities. Along with Dow Chemical, LMOGA, MDEQ, and the Texas RRC recommended that PHMSA consult with State regulatory agencies to avoid unnecessary reporting and compliance programs and to learn from the states' experience in regulating UNGSFs as it continues to develop Federal regulations.

2. Response to Comments on the State Permitting of UNGSFs

As for the comments seeking greater clarity on how the IFR affects State permitting of UNGSFs, PHMSA has not made any changes to the regulatory text because PHMSA does not have the authority to prescribe the location or siting of UNGSFs. This final rule also does not deal with permitting, directly. Section 12 of the PIPES Act expressly states that the Act shall not be construed to authorize PHMSA ''to prescribe the location of an underground natural gas storage facility'' or ''to require the Secretary's permission to construct'' a UNGSF.

3. Comments on State Regulation of UNGSFs Associated With Gas Production

IPAA, EDF, and Hilcorp requested that PHMSA clarify how the IFR applied to UNGSFs associated with gas-production facilities. IPAA stated that the Pipeline Safety Laws do not provide PHMSA with authority to regulate gas-production facilities, citing 49 U.S.C. 60101(a)(21)(A) and 60101(a)(22)(B). IPAA, EDF, and Hilcorp requested that PHMSA add an exception to part 192, specifically excluding UNGSFs that are ''in direct support of'' (Hilcorp) or that are ''co-located with and used to support of'' (IPAA) production operations.

IPAA gave two examples of the types of production-related UNGSFs located in active production fields that are used to manage production operations, rather than providing ''commercial storage services.'' The first type was facilities that store gas from a production field but has not yet entered a PHMSA-regulated pipeline. The second type was UNGSFs that are used for gas production purposes ''after being delivered to the production field in a PHMSA-regulated pipeline.'' In other words, they store gas that has either not yet entered transportation or that has ended transportation. Under both scenarios, IPAA contended, the stored gas at these facilities is not incidental to transportation but is used to support gas production. According to these industry commenters, such UNGSFs are used in the process of extracting natural gas from the ground and should not be treated as providing storage incidental to transportation under the Pipeline Safety Laws.

[30] Page 28. *https://www.ferc.gov/market-oversight/guide/energy-primer.pdf.*

[31] *See State of Texas* v. *PHMSA,* No. 17–60189 (5th Cir. Mar. 17, 2017).

4. Response to Comments on UNGSFs Associated With Gas Production

The PIPES Act directed PHMSA to establish minimum Federal standards for all UNGSFs that store natural gas incidental to transportation. Again, the PIPES Act does not alter or expand PHMSA's jurisdiction as it has traditionally been applied to natural gas production or hazardous liquid production facilities. While PHMSA has never exerted jurisdiction over gas pipeline facilities that are engaged exclusively in production and has long recognized the authority of states to regulate the permitting and siting of pipelines and to protect groundwater and other State natural resources. Only after transportation has begun and before delivery to an end-user is there any issue of PHMSA jurisdiction, which is limited to the transportation of gas and hazardous liquids.

This is analogous to PHMSA's regulation of other types of temporary storage of hazardous liquid in transit. For example, petroleum being transported by pipeline is often stored temporarily along the line in one or more breakout tanks. These tanks are used to relieve surges or receive and store hazardous liquid transported by pipeline for eventual re-injection and continued transportation by pipeline (49 CFR 195.2). Similarly, under this final rule, a UNGSF is defined as a gas pipeline facility ''that stores natural gas underground and incidental to the transportation of natural gas'' in interstate or foreign commerce.

PHMSA interprets this to mean that if a UNGSF is used in any way to store gas that is received from a PHMSA-regulated pipeline and returns any of that stored gas to transportation by pipeline, then such a facility is incidental to transportation and therefore covered by this final rule. Even if some of that gas is used to support production operations or is mingled with produced gas that has not yet entered transportation, the storage facility itself will be treated as a UNGSF under the final rule and will be subject to PHMSA's full jurisdiction.

5. Comments on States' Regulation of Intrastate UNGSFs

Several commenters expressed concern that the IFR potentially conflicted with existing State regulation of intrastate UNGSFs and that the IFR lacked clarity on how such conflicts could be avoided or minimized. MDEQ, for instance, commented that its Oil, Gas and Minerals Division ran a regulatory program affecting many safety and environmental issues covered by the RPs and that ''Michigan's existing regulations are needed to fill gaps in the IFR particularly in the areas of permitting, liquid waste handling and disposal; and environmental protection from liquid hydrocarbons, brines, and other liquid contaminants.'' The agency further commented that the IFR ''makes no mention of pollution prevention, nor does it set standards for remediation of spills.'' It noted that many UNGSFs are located in oil reservoirs that still produce liquid hydrocarbons and brine, and that the State of Michigan has comprehensive regulations covering pollution prevention, groundwater monitoring, remediation, and clean-up activities. In short, the State urged PHMSA to ''recognize the states' role in these areas.''

6. Response to Comments on the States' Regulation of Intrastate UNGSFs

First, PHMSA recognizes and supports the role that many states have played for many years in the field of underground gas storage. Nothing in the IFR or this final rule is intended to minimize or diminish the states' role in ensuring the safety of UNGSFs, protecting the environment, or safeguarding critical State resources. Section 12 of the PIPES Act, however, mandates that PHMSA regulate all UNGSFs that storing natural gas incidental to transportation. Under 49 U.S.C. 60104(c) and the recently-enacted 49 U.S.C. 60141(e), states with existing regulations may continue to regulate intrastate gas storage facilities to the extent that the proper State authority becomes certified by PHMSA and the State regulations are compatible with the new Federal minimum safety standards.

Second, the PIPES Act and this final rule do not modify or undermine established principles of Federal preemption law as applied to pipeline safety. Any State regulation affecting PHMSA's exclusive jurisdiction over the safety of interstate pipeline transportation facilities is, and always has been, preempted by the Pipeline Safety Laws.[32] The enforceability of existing or new State regulations affecting gas production, storage, plugging, or other areas such as mineral rights, depends on whether the State regulations are based on an independent basis under State law and cannot be considered safety regulations preempted by the PIPES Act, which is necessarily a case-by-case determination.

Third, the PIPES Act and this rule represent a major step forward in extending minimum Federal safety standards to all interstate gas storage facilities, regardless of whether individual states have already adopted regulations governing storage facilities or whether individual interstate operators have voluntarily complied with existing State regulations. As PHMSA discussed in the IFR, interstate UNGSF facilities would not be subject to any regulatory safety requirements in the absence of this Federal action.

Fourth, PHMSA fully recognizes that states with UNGSFs typically have various regulations in place governing the construction, remediation, and plugging of gas wells. Before the IFR went into effect, many interstate UNGSF operators relied on these State regulations to help develop best practices. State safety jurisdiction, however, extends only to intrastate UNGSFs. Regulations differ from State to State, making it difficult for operators to maintain consistent performance across all their interstate facilities. Finally, PHMSA will incorporate lessons learned from operators and states implementing this final rule in the form of guidance and additional rulemakings. PHMSA understands that seeking input from states is a vital component in developing an effective underground natural gas storage program at the Federal level.

As for the comments regarding potential conflicts between existing State regulation of intrastate UNGSFs, three points should be made. First, many State agencies enjoy independent authority under their own particular State's laws to regulate UNGSF involving public health, protection of groundwater, allocation of mineral rights, and similar areas not involving safety. Under established Federal preemption law, States may regulate in such areas that are not preempted expressly by Federal law or regulation.

In the field of underground natural gas storage, Congress, through the PIPES Act, has conferred authority on the Secretary (and delegated to PHMSA) to provide for the safety of natural gas storage facilities incidental to transportation, just as it has for other oil and gas pipeline facilities. This authority covers the design, construction, operation, and maintenance of UNGSF facilities. States are precluded from regulating the safety of UNGSFs to the extent that such State regulations conflict with PHMSA's safety-related regulations. To determine whether specific State regulations are preempted by the PIPES Act and this final rule may require a fact-specific analysis of whether a particular State regulation has been preempted, an

[32] *See, e.g., Colorado Interstate Gas Company* v. *Wright,* 707 F. Supp. 2d 1169 (D. Kan. 2010).

analysis that falls within the purview of State and Federal courts. Such preemption determinations have routinely been made by the courts to resolve challenges to State and local governments' authority to regulate gas and hazardous liquid pipelines.

Second, any potential conflict between existing State regulations governing intrastate UNGSFs and Federal safety regulations disappears, in most cases, in those states that have submitted annual certifications to PHMSA and become UNGSF State partners. All State partners in this program will have the authority to adopt and enforce additional or more stringent safety regulations than the minimum Federal standards set forth in the IFR. PHMSA anticipates and hopes that many states, such as Texas, Michigan, and other commenters that already have existing regulations affecting intrastate UNGSF safety, will decide to partner with PHMSA and enjoy the enhanced authority, Federal funding, and other benefits that accompany State certification.

Third, PHMSA encourages and supports State regulatory programs that help ensure all UNGSFs, both intrastate and interstate, address resource conservation, environmental protection, land use, emergency response, and other important issues affecting gas wells and storage outside the realm of safety.

PHMSA agrees with MDEQ's comments and encourages MDEQ to examine its existing State UNGSF regulations to determine whether any of them are safety-related standards that could be preempted by this final rule in the event Michigan decides that it does not wish to become a certified State partner for intrastate UNGSFs. If Michigan does become a State partner for UNGSFs, then MDEQ (or other State authority in Michigan) will be able to apply additional or more stringent safety standards, provided they are ''compatible'' with the minimum Federal standards prescribed under the Pipeline Safety Laws and this final rule. If it chooses not to become a State partner for UNGSFs, then the Federal minimum safety standards will apply to all intrastate UNGSFs in Michigan, and PHMSA will inspect such facilities and enforce the Federal minimum standards against all intrastate UNGSFs in the State.

7. Comments on States' Regulation of Interstate UNGSFs

Some commenters, including EDF and the Interstate Oil and Gas Compact Commission, expressed concern that the IFR did not go far enough in exercising jurisdiction over UNGSFs in a manner that optimized existing State regulations. EDF commented that the new Federal regulations would create a ''ceiling'' on State regulations for the permitting, drilling, completion, and operation of underground storage wells that have also been applied to interstate facilities. EDF acknowledged that while interstate facilities are under the exclusive safety jurisdiction of PHMSA, intrastate UNGSFs are frequently subject to both safety regulations promulgated by PHMSA and to other gas-storage rules promulgated by State regulators that generally apply to all gas wells in their particular states. EDF expressed the fear that interstate UNGSF operators who had been ''voluntarily obeying State rules responding to the State's unique geology, level of subsurface activity, competing surface activities and general appetite for risk may, with the cover of PHMSA's IFR, decline to continue following those rules, possibly to the detriment of safety and the environment.''

To address this concern, EDF asked PHMSA to include two specific provisions in the final rule. First, it asked PHMSA to distinguish between those State regulations of general applicability to all oil and gas wells (*i.e.,* those falling within the jurisdiction ceded to states under the Natural Gas Act of 1938) and those addressing the special risks intrinsic to gas storage wells. EDF requested that PHMSA direct interstate operators to adhere to State regulations for permitting, drilling, completion and operation of storage wells, but ''only to the extent the regulations address risks of general applicability to all oil and gas wells and where it is not impossible to comply with both the State regulations and PHMSA requirements.''

Second, EDF asked PHMSA to require interstate operators in states having adopted ''storage'' regulations to identify all State rules that an operator believes are ''storage'' rules and address those rules in their risk management plans as part of the operators' preventive and mitigative measures to address ''special risks intrinsic to gas storage.'' According to EDF, this would serve to preserve the efforts made by some states to ensure safety and environmental protections imposed in the face of no minimum Federal standards.

8. Response to Comments on the States' Regulation of Interstate UNGSFs

As noted earlier, EDF and other commenters have pointed out that a number of interstate UNGSF operators in states with mature regulatory programs in place have been ''voluntarily'' obeying State rules. PHMSA acknowledges EDF's concern that some interstate operators may choose to no longer voluntarily comply with State UNGSF regulations that go beyond the new minimum Federal standards embodied in the final rule. However, the Federal standards do not disincentivize the voluntary compliance that was previously occurring before the IFR went into effect, provided that the voluntary compliance is compatible with the Federal standards. Therefore, it seems unlikely that an interstate operator who is already voluntarily complying with existing State safety-related standards would stop doing so because of this final rule unless voluntary compliance were to result in non-compliance with the Federal standard. Further, this is the same situation that exists with other State regulations that may affect gas and hazardous liquid pipelines and with which interstate operators may or may not choose to comply. For these reasons, PHMSA declines to modify the final rule to require interstate operators to take such State regulations into account in their IM plans or other procedures. The agency believes it would be inconsistent and impracticable to require operators to evaluate and include in their plans and procedures certain provisions of State regulations for UNGSFs but not for other pipeline facilities. This would put PHMSA in the untenable position of elevating certain State regulations for all interstate UNGSF operators but not for other State pipeline regulations. If PHMSA learns of State regulations that should be applied more broadly for all interstate UNGSF operators, it may consider amending its regulations through notice-and-comment rulemaking to make them applicable uniformly among all interstate operators.

I. Definitions and Terminology

The IFR added a definition for ''underground natural gas storage facility'' at 49 CFR 191.3 based on the definition provided in section 12 of the PIPES Act. The IFR's definition included the wellhead, downhole components, and associated onsite structures that lay within the scope of PHMSA's regulatory authority. The IFR provided no additional definitions.

1. Comments Regarding Definitions and Terminology

Several commenters asked that PHMSA modify the definition of ''underground natural gas storage facility'' in the final rule and to clarify or define other terms not defined in the IFR. Two commenters requested that

PHMSA create separate definitions for interstate and intrastate facilities. They said that clarification in the final rule would prevent jurisdictional confusion at the State level and enable their organizations to apply the rules more predictably.

Operators recommended a revised definition of ''underground natural gas storage facility,'' while others asked that PHMSA clarify the terms ''workover'' and ''modified well.''

The Associations recommended that PHMSA revise the definition of ''underground natural gas storage facility'' to avoid confusion with other subparts of 49 CFR part 192. They were concerned that the definition in the IFR included ''piping, rights-of-way, property, buildings, compressor units, separators, metering equipment, and regulator equipment,'' terminology that could imply components of a UNGSF were covered by both the underground natural gas storage regulations at § 192.12 and other provisions in part 192. They recommended that the definition of ''underground natural gas storage facility'' be amended to exclude ''facilities covered by part 192 of this chapter.''

The Associations further noted that the definition of a UNGSF included the term ''solution-mined salt cavern reservoir.'' They stated that the term ''reservoir'' is inaccurate in reference to salt caverns and recommended that PHMSA use the term ''a solution-mined salt cavern'' for technical accuracy. Similarly, the GPTC recommended that the final rule revise the definition of UNGSF to align with the scope of the RPs 1170 and 1171.

Similarly, PG&E recommended that PHMSA replace the definition of ''underground natural gas storage facility'' at § 192.3 with the following:

> ''Underground gas storage facility means a facility that stores natural gas in an underground facility incidental to natural gas transportation, which is constructed from a depleted hydrocarbon reservoir, an aquifer reservoir, or a solution-mined salt cavern. In addition to the reservoir, this also includes the injection, withdrawal, monitoring, observation wells, and associated wellhead equipment within the facility.''

PG&E also recommended that PHSMA remove the phrase ''including injection, withdrawal, monitoring, or observation well for an underground natural gas storage facility'' from the criteria for submitting a safety-related condition report under § 191.23. The company stated that because such equipment was already included in the definition of ''underground natural storage facility,'' operators might incorrectly conclude that two reports were required since the equipment was already covered under other provisions of part 191.

Northern Natural Gas, stated that the definition of a ''modified well'' was not clear and could be interpreted to include some minor or routine operations, such as the replacement of downhole equipment, casing repairs, or tubing changes.

2. PHMSA's Response to Comments Regarding Definitions and Terminology

PHMSA agrees with the commenters' suggestion to revise the definition of ''underground natural gas storage facility,'' and, therefore, is amending it in this final rule. The revised definition will better articulate the point of demarcation between facilities that constitute the UNGSFs and those that are part of other gas pipeline facilities. Traditionally, compressor units, buildings, and separators have been considered part of the ''topside'' pipe domain and are already regulated by other sections of part 192. These components can be connected to or from UNGSFs. PHMSA considers a UNGSF to include all components up to the valve assembly (and their flanges) that route gas at the wellhead to or from the connected pipeline(s). The valve assembly may be a single manual or automated valve or a combination of valves (*e.g.,* manual and emergency shutdown) and will be located near the wellhead.

With respect to the need for separate definitions for intrastate and interstate UNGSFs, PHMSA sees no need for such definitions. The use of the phrase ''incidental to natural gas transportation'' in 49 CFR 192.3 makes clear that the scope of PHMSA's jurisdiction over UNGSFs does not depend upon whether a facility is ''interstate'' or ''intrastate'' but whether it is tied to ''transporting gas,'' as that term is defined under 49 U.S.C. 60101(a)(21). This means that UNGSFs may include gas storage facilities that can be used occasionally or partially for production operations, such as enhanced recovery, gas lift, and for production equipment such as power generation and powering compressors and pumps.

Other commenters requested that PHMSA clarify common terms used throughout RPs 1170 and 1171, such as ''wellhead,'' ''workover,'' or ''modified well.'' For similar reasons, the final rule does not provide definitions for technical terms generally known to industry, such as ''wellhead,'' ''modified well,'' and ''workover.'' PHMSA will work with operators on a case-by-case basis should the need arise to determine the appropriate application of such terminology under the modified regulatory text in the final rule.

J. Requests for Additional or More Stringent Requirements

PHMSA received several comments from private citizens related to additional or more stringent requirements for UNGSFs that do not fit into the other categories already discussed. Gas Free Seneca, EDF, and several private citizens asked PHMSA to require the widespread use of subsurface safety valves. Some called for a plan to decommission UNGSFs. Others called for a moratorium on new facilities.

The widespread use of subsurface safety valves may have value but would require further study and research as to their effective use at each type of UNGSF over other safety enhancements or alternatives. In PHMSA's ongoing discussions with operators, the failure rates of subsurface safety valves during testing are variable. Additionally, once installed, an operator would have to re-open the well to make any repairs to the subsurface safety valve, requiring a workover rig to retrieve the valve. Given these factors, PHMSA would require additional certainty and a strong safety case before promulgating a Federal requirement for the widespread use of subsurface safety valves.

As for a moratorium, PHMSA does not have the authority to site UNGSF facilities (and, by extension, to ban new facilities) or to abrogate the power of states to issue permits. Therefore, a moratorium would be outside the scope of PHMSA's authority and contrary to the PIPES Act.

PHMSA recognizes that there are inherent risks to operating a UNGSF; however, Federal and State regulations minimize these risks by requiring operators to adhere to clear performance standards designed to maintain the integrity of the wellhead and reservoir or cavern. Furthermore, the addition of requirements in this final rule related to IM and recordkeeping will add greater rigor to the risk-management practices than in the IFR. In summary, the IFR and this final rule constitute the first large-scale application of PHMSA's regulation jurisdiction to UNGSFs. As operators begin applying the RPs and assessing the integrity of their facilities and as PHMSA gains experience in regulating UNGSFs, the need for any additional prescriptive measures will become apparent.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 *et seq.*), as amended by the PIPES Act (Pub. L. 114–183, June 22, 2016). Section 60102 authorizes the Secretary of Transportation to issue regulations governing the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. The Secretary has delegated her authority in this area to the Administrator of PHMSA (49 CFR 1.97). PHMSA is issuing the amendments to the requirements for UNGSF involved in pipeline transportation under this authority.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant action under section 3(f) of E.O. 12866. Therefore, the Office of Management and Budget (OMB) has reviewed it.

PHMSA prepared a regulatory impact analysis (RIA) for the final rule, which details the potential for incremental benefits and costs. The RIA, which is available in the docket for this final rule, Docket No. PHMSA–2016–0016, provides an estimate of the annualized cost savings of the final rule and the other alternatives considered relative to the baseline. Given the final rule does not impose any costs relative to the baseline (IFR), PHMSA determined that the final rule is not economically significant under Executive Order 12866 because the estimated annual impact is less than $100 million.

Under the final rule, PHMSA expects operators to continue performing the same preventative safety measures that they are performing under the IFR. Because PHMSA does not expect the final rule to change operator safety-related actions, PHMSA does not expect changes to the benefits relative to the IFR. Implementation of the IFR already achieved benefits that will remain in place, including the potential prevention of catastrophic natural gas releases due to the failure of storage wells and the associated impacts on human health, property, and the environment, including climate change.

PHMSA does anticipate cost savings once the final rule becomes effective. Using the IFR as a baseline, the final rule will reduce recordkeeping and reporting burdens, and burdens associated with technical evaluations of non-mandatory RPs. The estimated annualized cost savings as a result of these changes is $8,452,365 to $12,810,620 when discounted to present value at 7 percent.

C. Executive Order 13771

This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires Federal agencies to consider the impact of their rules on small entities, analyze alternatives that minimize those impacts, and make their analyses available for public comments. The Act is concerned with three types of small entities: Small businesses, small nonprofits, and small government jurisdictions.

The RFA describes the regulatory flexibility analyses and procedures that Federal agencies must complete unless they certify that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. A statement of factual basis must support this certification, *e.g.,* by addressing the number of small entities affected by the proposed action, calculating expected cost impacts on these entities, and evaluating economic impacts.

PHMSA estimated that this final rule would affect 130 operators. Of these 130 operators, there are 14 small entities. However, this final rule is a deregulatory action that will reduce the burden of information collections. Therefore, PHMSA has determined that this final rule will not have a significant economic impact on any small entities.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, requires that Federal agencies assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of UMRA, PHMSA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that might result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) or more in any one year (*i.e.,* $153 million in 2016 dollars). This final rule will not result in such expenditure. Accordingly, PHMSA is not required to provide a written statement in accordance with the UMRA.

F. National Environmental Policy Act

PHMSA has analyzed this final rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and DOT Order 5610.1C. PHMSA has published the results of this analysis in an Environmental Assessment (EA) as required by 40 CFR part 1502.

Based on the EA, PHMSA has determined this final rule would not significantly affect the quality of the human environment. To assess the impact of these regulations on the human environment, PHMSA considered three alternative scenarios, including adopting the IFR without amendments, the API RPs as written, and the provisions in this final rule. PHMSA concludes that this action will not significantly affect the quality of the human environment.

To the extent that the measures taken to comply with the IFR did not involve additional environmental impacts and instead served to reduce the risk of natural gas incidents, PHMSA expects this final rule to continue these positive environmental impacts. The information in this Environmental Assessment report supports a Finding of No Significant Impact (FONSI) for this final rule.

G. Executive Order 13132

E.O. 13132 (''Federalism'') (64 FR 43255, Aug. 10, 1999) requires PHMSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' E.O. 13132 defines policies that have federalism implications to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.''

Section 6 of E.O. 13132 limits regulations that impose substantial direct compliance costs on a State unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments. PHMSA also may not issue regulations that preempt State law unless the agency consults with State and local officials early in the process of developing the regulation.

PHMSA has concluded that this action will not have federalism

implications because it does not impose any direct compliance costs on State or local governments. This final rule reduces the burden from information collection and therefore does not impose any direct compliance costs.

With respect to preemption, E.O. 13132 requires agencies to determine if their regulatory actions would preempt State law or impose a substantial direct cost in compliance on them. Congress explicitly addressed the preemption of State underground storage regulations in the PIPES Act in section 60141(e). A State authority may adopt additional or more stringent safety standards for intrastate underground natural gas storage facilities as long as they are compatible with Federal requirements. This statement is consistent with the existing statute governing PHMSA's preemption of State regulation over intrastate pipeline transportation facilities at 49 U.S.C. 60104(c).

As noted in the IFR and the discussion above, interstate facilities would not be subject to any regulatory safety requirements with respect to their wellhead and downhole facilities in the absence of Federal action. Even before the issuance of the IFR, the Federal Pipeline Safety Laws preempted any State regulation purporting to affect interstate pipeline transportation facilities. States with existing underground natural gas storage regulations may continue to implement those additional, and possibly more stringent, regulations on intrastate gas storage facilities to the extent that the State regulations are compatible with the new Federal regulations outlined in this final rule. Interstate underground storage facilities are now subject to the new Federal regulations, whereas previously, those facilities were not subject to any regulatory safety requirements.

H. Executive Order 13175

E.O. 13175 (''Consultation and Coordination with Indian Tribal Governments'') reaffirms the Federal Government's commitment to the Tribal sovereignty, self-determination, and self-government. To that end, the agencies must consult with Tribal governments as they develop policy on issues that may affect those communities. This final rule imposes no substantial direct compliance costs or burdens on Tribal governments. So, the requirements of E.O. 13175 do not apply.

I. Executive Order 13211

E.O. 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') requires Agencies to prepare a Statement of Energy Effects when undertaking certain actions. Such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply, distribution, or use, notably: (i) Any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

In a memorandum on E.O. 13211, OMB outlines the criteria for assessing whether a regulation constitutes a ''significant energy action'' and would have a ''significant adverse effect on the supply, distribution or use of energy.'' [33] Of the potentially adverse effects on the supply, distribution, relevant to this final rule, only one of the criteria is applicable to this final rule: The ability of interstate operators to pass costs on to consumers. However, because this final rule results in cost savings, it would not increase the cost of energy distribution.

J. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 272, directs Federal agencies to use voluntary consensus standards instead of government-written standards when appropriate. The OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' sets the policy for Federal use and development of voluntary consensus standards. As defined in OMB Circular A–119, voluntary consensus standards are technical standards developed or adopted by domestic and international organizations. These organizations use agreed-upon procedures to update and revise their published standards every three to five years to reflect modern technology and best technical practices.

Accordingly, PHMSA has the responsibility for determining, via petitions or otherwise, which standards it should add, update, revise, or remove from 49 CFR subchapter D. PHMSA handles these changes to incorporate by reference materials via the rulemaking process, which allows the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials.

PHMSA worked to make the materials incorporated by reference reasonably available to interested parties. PHMSA is prohibited from issuing a regulation that incorporates by reference any document unless that document is available to the public, free of charge (Pub. L. 113–30, Aug. 9, 2013).

To meet these requirements, PHMSA negotiated agreements with all but one of the respective standards developing organizations (SDO) with standards already incorporated by reference in the PSRs to make viewable copies of those standards available to the public at no cost. PHMSA has an agreement in place with API, who voluntarily made the RP 1171 and RP 1170 available on API's public website. API's mailing address and the website are listed in 49 CFR part 192.

K. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [34] (PRA), Public Law 104–13, is implemented by OMB and requires that agencies submit a supporting statement to OMB for any information collection that solicits the same data from more than nine parties. The PRA seeks to ensure that Federal agencies balance their need to collect information with the paperwork burden imposed on the public by the collection.

The definition of ''information collection'' includes activities required by regulations, such as for permit development, monitoring, recordkeeping, and reporting. The term ''burden'' refers to the ''time, effort, or financial resources'' the public expends to provide information to or for a Federal agency or to fulfill statutory or regulatory requirements otherwise. The PRA paperwork burden is measured in terms of annual time and financial resources the public devotes to meet one-time and recurring information requests.[35] Information collection activities may include:

- Reviewing instructions;
- Using technology to collect, process, and disclose information;
- Adjusting existing practices to comply with requirements;
- Searching data sources;
- Completing and reviewing the response; and
- Transmitting or disclosing information.

[33] E.O. 13211 was issued May 18, 2002. The Office of Management and Budget later released an Implementation Guidance memorandum on July 13, 2002.

[34] Substantially amending the PRA of 1980 (Pub. L. 96–511).

[35] 44 U.S.C. 3502(2); 5 CFR 1320.3(b).

Agencies must provide information to OMB on the parties affected, the annual reporting burden, the annualized cost of responding to the information collection, and whether the request significantly affects a substantial number of small entities. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. OMB has previously approved the information collection requirements contained in IFR under the provisions of the PRA. Since issuing the IFR, PHMSA has estimated changes in reporting and recordkeeping burden and submitted a revised information collection request to OMB for approval. Below is a summary the information collections requested or approved for this final rule.

1. Incident Reporting

PHMSA is finalizing the IFR's revision to 49 CFR 191.15 that requires operators to give notice upon the discovery of incidents meeting the definition at 49 CFR 191.3. Operators must submit DOT Form PHMSA–F7100.2 as soon as practicable but not more than 30 days after they detect the event. On August 16, 2017, OMB approved the use of this form, ''Incident and Annual Reports for Gas Pipeline Operators,'' under Control No. 2137–0522.

2. Safety-Related Conditions Reporting

PHMSA is finalizing the IFR's revision to § 191.23 that requires operators to report a safety-related condition no later than ten working days after its discovery. PHMSA estimates it will receive four annual responses at an annual burden of 24 hours from each operator. This estimate remains unchanged from the IFR's estimate.

On August 16, 2017, OMB approved this information collection, ''Reporting Safety-related conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines, and Liquefied Natural Gas Facilities,'' under Control No. 2137–0578, expiring on August 31, 2019. There is no form dedicated to this information collection. Instead, PHMSA will accept safety-related condition reports in a variety of formats by mail or fax. Instructions for filing are in § 191.25, ''Filing safety-related condition reports.''

3. Annual Reporting

PHMSA is finalizing the IFR's amendment to § 191.17, related to annual reporting. Operators must submit data Form 7100.4–1, ''Underground Natural Gas Storage Annual Report,'' no later than every March 15. The annual report must include data from the previous calendar year. For example, the first annual report was due no later than March 15, 2018, and must have included data from the 2017 calendar year. OMB approved this information collection, ''Incident and Annual Reports for Gas Pipeline Operators,'' on August 16, 2017, under Control No. 2137–0522, expiring on August 31, 2020.

In the IFR, PHMSA estimated a reporting burden of 8 hours to complete each annual report form. That estimate included times for reviewing instructions, gathering the necessary data, and responding to each question. However, PHMSA revised the hourly burden estimate from 8 hours to 20 hours per response based on public comments, which are available for review in Docket No. PHMSA–2016–0016.

4. National Registry of Operators and Notification of Changes

This information collection consists of two parts. The first part requires operators to obtain or validate an Operator Identification Number (OPID) from PHMSA. Under the IFR, PHMSA expected to receive 24 OPID requests and 25 ad hoc notifications. PHMSA estimated that each operator would take 1 hour to complete the OPID Assignment form, PHMSA F 1000.1. PHMSA is making no changes to these estimates in this final rule.

The IFR revised § 191.22 to require operators to notify PHMSA, not less than 60 days prior, of certain events. OMB approved this information collection on July 5, 2017, and it will expire on July 31, 2020. PHMSA estimates that this final rule will result in no additional hourly or cost burdens beyond those estimated in the IFR. PHMSA estimates the combined annual burden for OPID Assignment and Operator Notification at 49 hours. (OMB Control No. 2137–0627).

5. Recordkeeping

As discussed throughout this rulemaking, operators must create and maintain records and in accordance with RP 1170 and RP 1171. Operators must also create and maintain written procedure manuals for integrity and program operations. Because of these requirements in the IFR, and codified in this final rule, 136 entities will be required to keep records. PHMSA estimates that it will take operators approximately 1.6 hours annually to maintain the required records. The cost and hourly burden are based on 136 companies with a loaded labor cost of $88 per hour. OMB approved this information collection under OMB Control No. 2137–0634 on October 11, 2018, and it will expire on October 31, 2021. No additional collection or recordkeeping requirements would be imposed on the public by modifying the requirements of this final rule.

L. Privacy Act

In accordance with the Privacy Act of 1974, 5 U.S.C. 552(a), anyone can search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). The complete Privacy Act statement is in the **Federal Register** published on April 11, 2000, (65 FR 19477–78), or at the website: *https://www.transportation.gov/dot-website-privacy-policy.*

M. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is the unique identifier for each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. Use the RIN number to find this rulemaking in the Unified Agenda. The RIN number for this rulemaking is RIN 2137–AF22.

List of Subjects

49 CFR Part 191

Underground natural gas storage facility reporting requirements.

49 CFR Part 192

Definitions, Incorporation by reference, Underground natural gas storage facility safety.

49 CFR Part 195

National Registry of Operators.

In consideration of the foregoing, PHMSA is amending 49 CFR parts 191, 192, and 195 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, 60124, 60132, and 60141; and 49 CFR 1.97.

■ 2. In § 191.1, revise paragraph (a) to read as follows:

§ 191.1 Scope.

(a) This part prescribes requirements for the reporting of incidents, safety-

related conditions, annual pipeline summary data, National Registry of Operators information, and other miscellaneous conditions by operators of underground natural gas storage facilities and natural gas pipeline facilities located in the United States or Puerto Rico, including underground natural gas storage facilities and pipelines within the limits of the Outer Continental Shelf, as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

* * * * *

■ 3. In § 191.3, the definitions of ''Incident'' and ''Underground natural gas storage facility'' are revised to read as follows:

§ 191.3 Definitions.

* * * * *

Incident means any of the following events:

(1) An event that involves a release of gas from a pipeline, gas from an underground natural gas storage facility (UNGSF), liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:

(i) A death, or personal injury necessitating in-patient hospitalization;

(ii) Estimated property damage of $50,000 or more, including a loss to the operator and others, or both, but excluding the cost of gas lost; or

(iii) Unintentional estimated gas loss of three million cubic feet or more.

(2) An event that results in an emergency shutdown of an LNG facility or a UNGSF. Activation of an emergency shutdown system for reasons other than an actual emergency within the facility does not constitute an incident.

(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

* * * * *

Underground natural gas storage facility (*UNGSF*) means an underground natural gas storage facility or UNGSF as defined in § 192.3 of this chapter.

■ 4. In § 191.15, revise paragraphs (c) and (d) to read as follows:

§ 191.15 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Incident report.

* * * * *

(c) *Underground natural gas storage facility.* Each operator of a UNGSF must submit DOT Form PHMSA F7100.2 as soon as practicable but not more than 30 days after the detection of an incident required to be reported under § 191.5.

(d) *Supplemental report.* Where additional related information is obtained after an operator submits a report under paragraph (a), (b), or (c) of this section, the operator must make a supplemental report as soon as practicable, with a clear reference by date to the original report.

■ 5. In § 191.17, revise paragraph (c) to read as follows:

§ 191.17 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Annual report.

* * * * *

(c) *Underground natural gas storage facility.* Each operator of a UNGSF must submit an annual report through DOT Form PHMSA 7100.4–1. This report must be submitted each year, no later than March 15, for the preceding calendar year.

■ 6. Revise § 191.22 to read as follows:

§ 191.22 National Registry of Operators.

(a) *OPID request.* Effective January 1, 2012, each operator of a gas pipeline, gas pipeline facility, UNGSF, LNG plant, or LNG facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline, pipeline facility, or pipeline system for which the operator has primary responsibility. To obtain an OPID, an operator must submit an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Operators in accordance with § 191.7.

(b) *OPID validation.* An operator who has already been assigned one or more OPIDs by January 1, 2011, must validate the information associated with each OPID through the National Registry of Operators at *https://portal.phmsa.dot.gov,* and correct that information as necessary, no later than June 30, 2012.

(c) *Changes.* Each operator of a gas pipeline, gas pipeline facility, UNGSF, LNG plant, or LNG facility must notify PHMSA electronically through the National Registry of Operators at *https://portal.phmsa.dot.gov* of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction of any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs $10 million or more. If 60-day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new pipeline;

(iii) Construction of a new LNG plant, LNG facility, or UNGSF; or

(iv) Maintenance of a UNGSF that involves the plugging or abandonment of a well, or that requires a workover rig and costs $200,000 or more for an individual well, including its wellhead. If 60-days' notice is not feasible due to an emergency, an operator must promptly respond to the emergency and notify PHMSA as soon as practicable.

(2) An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs:

(i) A change in the primary entity responsible (*i.e.,* with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs;

(ii) A change in the name of the operator;

(iii) A change in the entity (*e.g.,* company, municipality) responsible for an existing pipeline, pipeline segment, pipeline facility, UNGSF, or LNG facility;

(iv) The acquisition or divestiture of 50 or more miles of a pipeline or pipeline system subject to part 192 of this subchapter; or

(v) The acquisition or divestiture of an existing UNGSF, or an LNG plant or LNG facility subject to part 193 of this subchapter.

(d) *Reporting.* An operator must use the OPID issued by PHMSA for all reporting requirements covered under this subchapter and for submissions to the National Pipeline Mapping System.

■ 7. Revise § 191.23 to read as follows:

§ 191.23 Reporting safety-related conditions.

(a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with § 191.25 the existence of any of the following safety-related conditions involving facilities in service:

(1) In the case of a pipeline (other than an LNG facility) that operates at a hoop stress of 20% or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.

(2) In the case of a UNGSF, general corrosion that has reduced the wall thickness of any metal component to less than that required for the well's maximum operating pressure, or localized corrosion pitting to a degree where leakage might result.

(3) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline or the

structural integrity or reliability of a UNGSF or LNG facility that contains, controls, or processes gas or LNG.

(4) Any crack or other material defect that impairs the structural integrity or reliability of a UNGSF or an LNG facility that contains, controls, or processes gas or LNG.

(5) Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20% or more of its specified minimum yield strength, or the serviceability or the structural integrity of a UNGSF.

(6) Any malfunction or operating error that causes the pressure of a pipeline or underground natural gas storage facility or LNG facility that contains or processes natural gas or LNG to rise above its maximum well operating pressure (or working pressure for LNG facilities) plus the margin (build-up) allowed for operation of pressure limiting or control devices.

(7) A leak in a pipeline, UNGSF, or LNG facility containing or processing gas or LNG that constitutes an emergency.

(8) Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank.

(9) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20% or more reduction in operating pressure or shutdown of operation of a pipeline, UNGSF, or an LNG facility that contains or processes gas or LNG.

(10) [Reserved]

(11) Any malfunction or operating error that causes the pressure of a UNGSF using a salt cavern for natural gas storage to fall below its minimum allowable operating pressure, as defined by the facility's State or Federal operating permit or certificate, whichever pressure is higher.

(b) A report is not required for any safety-related condition that—

(1) Exists on a master meter system or a customer-owned service line;

(2) Is an incident or results in an incident before the deadline for filing the safety-related condition report;

(3) Exists on a pipeline (other than an UNGSF or an LNG facility) that is more than 220 yards (200 meters) from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or

(4) Is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing the safety-related condition report, except that reports are required for conditions under paragraph (a)(1) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.

(5) Exists on an UNGSF, where a well or wellhead is isolated, allowing the reservoir or cavern and all other components of the facility to continue to operate normally and without pressure restriction.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 8. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, 60137, and 60141; and 49 CFR 1.97.

■ 9. In § 192.3, revise the definition of ''Underground natural gas storage facility'' to read as follows:

§ 192.3 Definitions.

* * * * *

Underground natural gas storage facility (*UNGSF)* means a gas pipeline facility that stores natural gas underground incidental to the transportation of natural gas, including:

(1)(i) A depleted hydrocarbon reservoir;

(ii) An aquifer reservoir; or

(iii) A solution-mined salt cavern.

(2) In addition to the reservoir or cavern, a UNGSF includes injection, withdrawal, monitoring, and observation wells; wellbores and downhole components; wellheads and associated wellhead piping; wing-valve assemblies that isolate the wellhead from connected piping beyond the wing-valve assemblies; and any other equipment, facility, right-of-way, or building used in the underground storage of natural gas.

* * * * *

■ 10. Republished § 192.7(b)(10) and (11) continue to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(b) * * *

(10) API Recommended Practice 1170, ''Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage,'' First edition, July 2015 (API RP 1170), IBR approved for § 192.12.

(11) API Recommended Practice 1171, ''Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs,'' First edition, September 2015, (API RP 1171), IBR approved for § 192.12.

* * * * *

■ 11. Revise § 192.12 to read as follows:

§ 192.12 Underground natural gas storage facilities.

Underground natural gas storage facilities (UNGSFs), as defined in § 192.3, are not subject to any requirements of this part aside from this section.

(a) *Salt cavern UNGSFs.* (1) Each UNGSF that uses a solution-mined salt cavern for natural gas storage and was constructed after March 13, 2020, must meet all the provisions of API RP 1170 (incorporated by reference, *see* § 192.7), the provisions of section 8 of API RP 1171 (incorporated by reference, *see* § 192.7) that are applicable to the physical characteristics and operations of a solution-mined salt cavern UNGSF, and paragraphs (c) and (d) of this section prior to commencing operations.

(2) Each UNGSF that uses a solution-mined salt cavern for natural gas storage and was constructed between July 18, 2017, and March 13, 2020, must meet all the provisions of API RP 1170 (incorporated by reference, *see* § 192.7) and paragraph (c) of this section prior to commencing operations, and must meet all the provisions of section 8 of API RP 1171 (incorporated by reference, *see* § 192.7) that are applicable to the physical characteristics and operations of a solution-mined salt cavern UNGSF, and paragraph (d) of this section, by March 13, 2021.

(3) Each UNGSF that uses a solution-mined salt cavern for natural gas storage and was constructed on or before July 18, 2017, must meet the provisions of API RP 1170 (incorporated by reference, *see* § 192.7), sections 9, 10, and 11, and paragraph (c) of this section, by January 18, 2018, and must meet all provisions of section 8 of API RP 1171 (incorporated by reference, *see* § 192.7) that are applicable to the physical characteristics and operations of a solution-mined salt cavern UNGSF, and paragraph (d) of this section, by March 13, 2021.

(b) *Depleted hydrocarbon and aquifer reservoir UNGSFs.* (1) Each UNGSF that uses a depleted hydrocarbon reservoir or an aquifer reservoir for natural gas storage and was constructed after July 18, 2017, must meet all provisions of API RP 1171 (incorporated by reference, *see* § 192.7), and paragraphs (c) and (d) of this section, prior to commencing operations.

(2) Each UNGSF that uses a depleted hydrocarbon reservoir or an aquifer reservoir for natural gas storage and was

constructed on or before July 18, 2017, must meet the provisions of API RP 1171 (incorporated by reference, *see* § 192.7), sections 8, 9, 10, and 11, and paragraph (c) of this section, by January 18, 2018, and must meet all provisions of paragraph (d) of this section by March 13, 2021.

(c) *Procedural manuals.* Each operator of a UNGSF must prepare and follow for each facility one or more manuals of written procedures for conducting operations, maintenance, and emergency preparedness and response activities under paragraphs (a) and (b) of this section. Each operator must keep records necessary to administer such procedures and review and update these manuals at intervals not exceeding 15 months, but at least once each calendar year. Each operator must keep the appropriate parts of these manuals accessible at locations where UNGSF work is being performed. Each operator must have written procedures in place before commencing operations or beginning an activity not yet implemented.

(d) *Integrity management program*—(1) *Integrity management program elements.* The integrity management program for each UNGSF under this paragraph (d) must consist, at a minimum, of a framework developed under API RP 1171 (incorporated by reference, *see* § 192.7), section 8 (''Risk Management for Gas Storage Operations''), and that also describes how relevant decisions will be made and by whom. An operator must make continual improvements to the program and its execution. The integrity management program must include the following elements:

(i) A plan for developing and implementing each program element to meet the requirements of this section;

(ii) An outline of the procedures to be developed;

(iii) The roles and responsibilities of UNGSF staff assigned to develop and implement the procedures required by this paragraph (d);

(iv) A plan for how staff will be trained in awareness and application of the procedures required by this paragraph (d);

(v) Timelines for implementing each program element, including the risk analysis and baseline risk assessments; and

(vi) A plan for how to incorporate information gained from experience into the integrity management program on a continuous basis.

(2) *Integrity management baseline risk-assessment intervals.* No later than March 13, 2024, each UNGSF operator must complete the baseline risk assessments of all reservoirs and caverns, and at least 40% of the baseline risk assessments for each of its UNGSF wells (including wellhead assemblies), beginning with the highest-risk wells, as identified by the risk analysis process. No later than March 13, 2027, an operator must complete baseline risk assessments on all its wells (including wellhead assemblies). Operators may use prior risk assessments for a well as a baseline (or part of the baseline) risk assessment in implementing its initial integrity management program, so long as the prior assessments meet the requirements of API RP 1171 (incorporated by reference, *see* § 192.7), section 8, and continue to be relevant and valid for the current operating and environmental conditions. When evaluating prior risk-assessment results, operators must account for the growth and effects of indicated defects since the time the assessment was performed.

(3) *Integrity management re-assessment intervals.* The operator must determine the appropriate interval for risk assessments under API RP 1171 (incorporated by reference, *see* § 192.7), subsection 8.7.1, and this paragraph (d) for each reservoir, cavern, and well, using the results from earlier assessments and updated risk analyses. The re-assessment interval for each reservoir, cavern, and well must not exceed seven years from the date of the baseline assessment for each reservoir, cavern, and well.

(4) *Integrity management procedures and recordkeeping.* Each UNGSF operator must establish and follow written procedures to carry out its integrity management program under API RP 1171 (incorporated by reference, *see* § 192.7), section 8 (''Risk Management for Gas Storage Operations''), and this paragraph (d). The operator must also maintain, for the useful life of the UNGSF, records that demonstrate compliance with the requirements of this paragraph (d). This includes records developed and used in support of any identification, calculation, amendment, modification, justification, deviation, and determination made, and any action taken to implement and evaluate any integrity management program element.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 12. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118, 60132, 60137, and 49 CFR 1.97.

■ 13. In § 195.64:

■ a. Revise the section heading;

■ b. Remove ''National Registry of Pipeline and LNG Operators'' and add ''National Registry of Operators'' in its place everywhere it appears; and

■ c. Remove the website address ''*http://opsweb.phmsa.dot.gov*'' in paragraphs (b) and (c) and add ''*https://portal.phmsa.dot.gov*'' in its place.

The revision reads as follows:

§ 195.64 National Registry of Operators.

* * * * *

Issued in Washington, DC, on January 10, 2020, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator.

[FR Doc. 2020–00565 Filed 2–11–20; 8:45 am]

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